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(2)

Supreme Court, U.S.
FILED
NOV 18 2004
OFFICE OF THE CLERK

No. 04-514

In the Supreme Court of the United States

RICKY BELL, WARDEN
Petitioner,

v.

GREGORY THOMPSON,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

APPENDICES TO RESPONDENT'S BRIEF IN OPPOSITION

Dana C. Hansen Chavis
Federal Defender Services
Of Eastern Tennessee, Inc.
530 South Gay Street Suite 900
Knoxville, TN 37902
(865) 637-7979

Counsel of record for Respondent

APPENDIX

"A"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

GREGORY THOMPSON, *Petitioner,* v. RICKY BELL, WARDEN, Riverbend Maximum Security Institution *Respondent.*	)	No. 1:04-cv-177 *Edgar/Shirley*

ORDER

Petitioner Gregory Thompson ("Thompson" or "Petitioner") was convicted of first degree murder and sentenced to death by the Criminal Court of Coffee County, Tennessee. Petitioner is currently confined at the Riverbend Maximum Security Institute in Nashville, Tennessee. Thompson has filed a petition for writ of habeas corpus and requests an evidentiary hearing on his competency to be executed [Court File No. 1]. Petitioner has also filed a motion for stay of execution [Court File No. 2], based on a claim that he is incompetent to be executed. *See Ford v. Wainwright*, 477 U.S. 399 (1986). Petitioner has paid the $5.00 filing fee.

Pursuant to 28 U.S.C. § 2251, the Court GRANTS a brief stay of Thompson's execution that SHALL expire automatically upon the issuance of an order by this court denying Thompson's petition but that shall remain in place upon the issuance of an order granting Thompson's writ of habeas corpus [Court File No. 2].

The Clerk is DIRECTED to fax an executed copy of this Order to Warden Ricky Bell, Riverbend Maximum Security, Nashville, Tennessee; to the Attorney of General of Tennessee; and Ms. Danna C. Hansen Chavis of the Federal Community Defender Service in Knoxville. The Clerk

is DIRECTED to serve a copy of the entire file in this action by certified mail on the respondent and Attorney General of Tennessee.

It is further ORDERED that Respondent SHALL submit his response within ten (10)days from the date of this order.

The case is referred to the Magistrate Judge for the disposition of all non-dispositive motions.

ENTER:

/s/
CURTIS L. COLLIER
UNITED STATES DISTRICT JUDGE

Date: 6/21/2004 3:05 PM
Sender: tned_cm-ecf@tned.uscourts.gov
To: tned_Courtmail@tned.uscourts.gov
bcc: Michele Daniel
Priority: Normal
Subject: Activity in Case 1:04-cv-00177 Thompson v. Bell "Order on Mo

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Eastern District of Tennessee

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The following transaction was received from ALR, entered on 6/21/2004 at 3:05
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Case Name: Thompson v. Bell
Case Number: 1:04-cv-177 http://ecf.tned.uscourts.gov/cgi-bin/DktRpt.pl?38604

Document Number: 4
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http://ecf.tned.uscourts.gov/cgi-bin/show_case_doc?4,38604,,82165527,

Docket Text:
ORDER granting a brief stay of Thompson's execution that shall expire automatically upon issuance of an order by this court denying Thompson's
petition but shall remain in place upon issuance of an order granting Thompson's
writ of habeas corpus [2]; and the Respondent shall submit his response within
10 days from the date of this order; case referred to the Magistrate Judge for
the disposition of all non-dispositive motions. Signed by Judge Curtis L Collier
on 6/21/04. (ALR,)

The following document(s) are associated with this transaction:
Document description: Main Document
Original filename: n/a
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[b0c145b78dc9eb93effe162745c8d7b2ef413544f58df9dbaee1dce99de0bc597f180553bdcdb7b
fd0f83207f9648299f14651ec429a6976aab2b796713e0d47]]

1:04-cv-177 Notice will be electronically mailed to:
Dana C Hansen Chavis
dana_hansen@fd.org,

Sharlott_Swanger@fd.org;Melinda_Christian@fd.org;Michele_Daniel@fd.or
g

1:04-cv-177 Notice will not be electronically mailed to:
Leonard Green
United States Court of Appeals
For the Sixth Circuit
100 East Fifth Street, Room 532
Potter Stewart U.S. Courthouse
Cincinnati, OH 45202-3988

APPENDIX

"B"

IN THE CIRCUIT COURT FOR COFFEE COUNTY
MANCHESTER, TENNESSEE

GREGORY THOMPSON,

Petitioner,

v.

RICKY BELL, Warden,

Respondent.

Case No: 31,213

FILED

MAY 29 2001

CIRCUIT COURT
COFFEE COUNTY, TN
HEATHER HINDS DUNCAN, CLERK

PETITION FOR WRIT OF *ERROR CORAM NOBIS*

Hearing Requested

Comes now Petitioner, Gregory Thompson, through undersigned counsel pursuant to T.C.A. § 40-26-105 and Burford v. State, 845 S.W.2d 204 (Tenn. 1992), and petitions the Court for a writ of *error coram nobis* granting an evidentiary hearing on his claim of subsequently or newly discovered evidence that, if presented at earlier state proceedings, would have resulted in a different judgment. In support hereof Mr. Thompson shows as follows:

I. The State of Tennessee Recently Acknowledged Mr. Thompson's Long History of Bipolar Disorder and Psychotic Symptoms, Declared Him Incompetent, and Ordered the Appointment of a Conservator.

On January 19, 2001, Dr. Casey C. Arney, a treating mental health professional at the Special Needs Facility of the Tennessee Department of Corrections submitted a sworn recommendation for the appointment of a conservator for Mr. Thompson. Dr. Arney stated:

> ...Mr. Thompson is a 38 year old gentleman with a long history of Bipolar Disorder and psychotic symptoms. He has severe symptoms of mania with racing tangential thoughts, pressured speech, in delusional grandiosity. He becomes severely agitated and hostile at times. He has assaulted staff in the recent past which appears to be related to his mental illness. It has been recommended by the treatment review committee to be treated with involuntarily medication [sic] and have a conservator assigned to him.

> It is my opinion that Mr. Thompson lacks the insight into his illness to make decisions regarding mental health and medical treatment at this time. I believe that a conservator is necessary to make appropriate decisions regarding his care and without such conservatorship, harm is likely to come to Mr. Thompson or others as a result of his mental illness. Mr. Thompson's illness is chronic and fluctuating in nature, therefore extended periods of marked improvement are not expected.

(Competency Evaluation of Greg Thompson by Casey Arney, M.D.; Attachment A).

Acting on Dr. Arney's professional recommendation, Tennessee Attorney General and Reporter, Paul G. Summers, petitioned the State Chancery Court for the appointment of a conservator. Attorney General Summers asserted that Mr. Thompson "is in need of protection and assistance by reason of the illness rendering him presently disabled..." (Petition by Attorney General and Reporter Paul G. Summers For Appointment of Conservator, p. 1; Attachment B). Attorney General Summers requested the Chancery Court find Mr. Thompson "incapable of managing his person ... based upon his present mental condition" (Id. at p. 2) and "in view of the seriousness of the Respondent's [Mr. Thompson's] condition the Court immediately appoint a Guardian ad Litem and expedite these proceedings." (Id. at p. 3).

On April 26, 2001, the Chancery Court for the State of Tennessee, 20th Judicial District, Davidson County, appointed Sherry Goodwin as conservator for Mr. Thompson. (Order of the Court; Attachment C).

II. During Prior State Court Proceedings the State of Tennessee Had Denied Mr. Thompson's Mental Illness and Asserted That Mr. Thompson was Malingering.

During Mr. Thompson's capital trial the deposition of Dr. Watson was introduced into evidence despite defense counsel's objection. Dr. Watson testified that Mr. Thompson was not psychotic and instead was malingering mental illness. (Trial Transcript Vol. 20, p. 153). Dr. Watson further testified that Mr. Thompson "had no mental illness or defect which would render

him harmful to himself or others." (Trial Transcript Vol. 20, p. 169). During closing argument the prosecutors argued that Dr. Watson found

> A malingering or faking of a mental illness. This man [Mr. Thompson] had no mental illness. He has no organicity, he has no brain damage, but he has antisocial behavior - - mean and sorry. That is all that is wrong with Gregory Thompson. There is nothing wrong with him...

(Trial Transcript Vol. 21 at p. 8; see also id. at p. 68 & 73). In rendering its decision on direct appeal, the Tennessee Supreme Court relied upon Dr. Watson's testimony. State v. Thompson, 768 S.W.2d 239, 244, 248-249 (Tenn. 1989).

In opening remarks at the post-conviction evidentiary hearing, the post-conviction trial court listed two issues it deemed "relevant and pertinent"; the ineffective assistance of trial counsel and "the present mental condition and capacity of the petitioner [Mr. Thompson]." (Post-Conviction Transcript Vol. I, p. 3).

During the post-conviction hearing the prosecutor argued that Mr. Thompson did not suffer from psychosis, schizophrenia or bipolar disorder. (Post-Conviction Transcript Vol. II, pp. 223 -248). Instead, the prosecutor argued that Mr. Thompson was malingering mental illness and had "antisocial personality disorder." (Id. at p. 256-257).[1] On appeal the Tennessee Court of Criminal Appeals also relied upon the argument that Mr. Thompson malingered mental illness. Thompson v. State, 958 S.W.2d 156, 166-167 (Tenn.Crim.App. 1997).

Contrary to its position during prior state court proceedings the State of Tennessee has finally acknowledged that Mr. Thompson suffers from a genuine and debilitating mental illness. Mr. Thompson's mental illness is directly related to the offense for which he stands convicted of first-degree murder and under sentence of death. As Dr. Amey states in his affidavit, Mr.

---

[1] In fact, Dr. Watson did not support a finding of "antisocial personality disorder" but instead "adult antisocial behavior." (Trial Transcript Vol. 20, p. 161-162) Dr. Blair explained that "adult antisocial behavior [] is not a personality disorder. It just means, in essence, that someone has broken the law and its very different from having an antisocial personality disorder..." (Post-Conviction Transcript Vol. II, p. 256).

Thompson's assault on staff "is related to his mental illness" and "harm is likely to come to Mr. Thompson or others as a result of his mental illness." (See Attachment A).

III. Evidence Relating to Mr. Thompson's Mental Capacity at the Time of the Offense, Trial, and/or Post-Conviction Proceedings Should Now Be Considered by the State Courts.

This Court should review Mr. Thompson's case in light of the recent evidence of Mr. Thompson's long-standing mental incapacity. The purpose of the writ of *error coram nobis* is to bring to the attention of the court some facts unknown to the court which, if known, would have resulted in a different judgment. State ex rel. Carlson v. State, 219 Tenn. 80, 85-86, 407 S.W.2d 165, 167 (Tenn. 1966). A writ of *error coram nobis* will issue upon a showing by the defendant that he was without fault in failing to present that evidence at the proper time. State v. Mixon, 983 S.W.2d 661, 668 (Tenn. 1999). The writ should issue for Mr. Thompson.

Throughout Mr. Thompson's state court proceedings counsel knew that Mr. Thompson's mental state was the crucial issue. (Trial Transcript Vol. I, p. 38, 120). Mr. Thompson believed he and Ms. McNamara were on the run from the Ku Klux Klan. They fled from Georgia to Tennessee. When Ms. McNamara's relative, with whom they had sought refuge, refused them further lodging, they attempted to return home to Georgia. Without money or transportation, the kidnaping of the victim to obtain her car was understandable. But trial counsel could not understand why the victim had been killed when there were other alternatives and knew that the jury would have the same lingering question. (Post-conviction Transcript Vol. I, p. 134). Indeed Martin Trimble, the foreperson of the jury, later testified at the motion for new trial:

> I have stated, and I believe, that the one fact that was not as developed as I would have thought, out of a case that was as detailed as it was, was his age and those contributing factors that might have led him to turn from a well-rounded young man, I'll say, to the type of person he turned out to be. I am not

> a clinical psychologist or anything, but I believe there might have been more work done in that area; but again, I don't know that it would be an overriding factor. It would be one that might have eased my conscious or made me have a better feeling about what we did. We took that very serious. You do not say to take a man's life without being doggone serious, folks. We did that, and we discussed that at length among ourselves; and the conclusion – and I have to say that I agreed with it – was that he was old enough and had the background to have done better than he did; but I do think that probably more could have been done along that line.

(Motion for New Trial, Vol. I p. 77).

Counsel did request a mental health evaluation of Mr. Thompson. (Trial Technical Record p. 19, Motion for Mental or Psychological Examination; Trial Transcript Vol. I, p. 41). The trial court granted the motion by sending Mr. Thompson to Middle Tennessee Mental Health Institute ("MTMHI"), a state facility, for evaluation. (Trial Technical Record p. 64-65, Motion for Continuance; Trial Technical Record p. 84, Order). At MTMHI Mr. Thompson was given "numerous tests" by what the state described as a "team" of experts. (Trial Transcript Vol. XIX, p. 35, 52; Trial Transcript Vol. XX, p. 157, 176). The team made a joint evaluation to which Dr. Watson, the forensic psychologist, testified.

Counsel also filed a notice of insanity defense. (Trial Transcript, Vol. III p. 162). Counsel questioned the independence of MTMHI's psychiatric evaluation (Trial Transcript, Vol. I, p. 20) and requested their own psychiatrist pursuant to *Ake v. Oklahoma*. (Trial Transcript, Vol. I, p. 111). The request was granted. (Trial Technical Record, p. 234, Order). Despite (a) the court's order approving a psychiatrist to examine Mr. Thompson and assist the defense, (b) the knowledge that the State would have psychiatric and other medical opinions of Mr. Thompson at its disposal, and (c) the *Ake* prescription of a psychiatrist to assist in the defense, counsel used the court-ordered mental health funds to hire Dr. Copple who was not a psychiatrist but an "industrial psychologist" (Trial Transcript Vol. I, p. 119). The effort to hire a psychiatrist simply "was not successful" (Post-conviction Transcript, Vol. II, p. 193). Before hiring the industrial psychologist, counsel had tried to find a particular psychiatrist, but "he had

moved to Idaho" (Post-conviction Transcript, Vol. I, p. 43). Counsel "had a kind of a vague recollection of trying to talk to a couple of psychiatrists in Nashville..." (Id. at 45).

Yet three psychiatrists who had treated Mr. Thompson from 1985, when the trial took place, to 1990 told a very different story than that of the MTMHI team. The treating psychiatrists

> had diagnosed him as either having a bipolar disorder or a schizo affective disorder or schizophrenia. They described his agitated behavior. They described his hostility. They described his inappropriate affect, his experience of auditory hallucinations, his delusions, his paranoia, his thoughts of persecution. He had attempted suicide on a couple of occasions. He had set fire to his cell burning both his hands and his face. They had certainly – two of those psychiatrists and maybe all three of them had considered the possibility that he was malingering, that he was faking mental illness and throughout their Riverbend records, it was clear that those psychiatrists had discounted the possibility of malingering because they didn't feel that it accounted for all of the psychotic symptoms they saw in him.

(Post-conviction Transcript Vol. II, p. 209-10).

Mr. Thompson was evaluated at MTMHI by the State's team for thirty days. The industrial psychologist, however, analyzed Mr. Thompson for a total of less than eight hours: two sessions lasting three and one-half hours each and two further sessions lasting twenty minutes each. (Trial Transcript, v. 18, p. 123-124, 127).

Trial counsel made an uninformed decision that the guilt-phase case could not be defended. (Post-conviction Transcript, Vol. I, p. 58). Instead, counsel focused on securing witness testimony about Petitioner's good acts and exemplary behavior up through his high school years for presentation at the sentencing phase. (Post-conviction Transcript, Vol. II, p. 192). Admittedly, counsel failed to pursue what they considered "negative" information about Mr. Thompson. Without expert psychiatric assistance counsel failed to understand the significance of such information. Since counsel, being uninformed and untrained on such matters, could not explain Mr. Thompson's drastic change of behavior subsequent to high

school, they offered the jury what information they had. Mr. Thompson's changed behavior remained unexplained.

The defense presented no theory whatever at guilt/innocence and Mr. Thompson was convicted of first-degree murder. At the penalty phase they put on a bizarre, incredible defensive theory – that Mr. Thompson committed a brutal murder out of a need to "nurture." (Trial Transcript, Vol. XVIII, p. 142-143 and Vol. XIX, p. 2-5).

Mr. Thompson's prior head injuries were brought out at the punishment phase: one from an auto accident where he sustained a concussion and required hospitalization (Trial Transcript, Vol. XIX, p. 152) and another from an assault by three men with a hammer or crowbar, opening a wound which required stitches (Trial Transcript, Vol. XVIII, p. 54). Ms. Cajulao testified that directly after suffering the latter injury Mr. Thompson

> would get very paranoid. When we lived together, we had a fern tree growing on the side of the house; and he was constantly chopping the backside of it down. He would tell me when I came home to make sure nobody was standing behind there that might hurt me.

(Id. at p. 56). Without a psychiatrist the defense was unable to explain the significance of these events or even address – much less counter – the state mental health team's conclusion that Mr. Thompson had neither brain damage or "psycho-motor impairment" (Trial Transcript, Vol. XX, p. 156). Predictably, the industrial psychologist, since he was not a medical doctor, had found no evidence of brain damage (Post-conviction Transcript, Vol. II, p. 189).

The industrial psychologist testified only at the sentencing phase. He asserted a belief that Mr. Thompson committed the brutal murder due to a need to "nurture" people – in this case, Ms. MacNamara (Trial Transcript, Vol. XIX, p. 26). Having examined Mr. Thompson, the psychologist testified that "I find in this man a very strong, an unusually strong need for what we call nurturance, to meet the needs of people" (Trial Transcript, Vol. XVIII, p. 141). Of Mr. Thompson's motive in committing the offense, the psychologist reasserted the shattered

defense theory that the murder had been committed due to fear of capture. This theory was incomprehensible even with the industrial psychologist's backing; the need to "nurture" Ms. MacNamara by helping her may have provided some explanation for the taking of the victim's car, and possibly explained the kidnaping of the victim as a means to getting her car, but it provides only a flimsy explanation for the later murder of the victim. Because, in Mr. Trimble's words, "those contributing factors that might have led him [Mr. Thompson] to turn from a well-rounded young man...to the type of person he turned out to be" were not developed, Mr. Thompson was sentenced to death.

During post-conviction proceedings, Mr. Thompson raised an ineffective assistance of counsel claim. Post-conviction counsel repeatedly requested funds for a mental health expert to demonstrate prejudice from trial counsel's deficient performance with respect to the mental health aspects of the case. The prosecutor argued that counsel were not entitled to experts at state expense (Post-conviction Transcript Vol. I, p. 16) and state law did not provide for expert services on post-conviction. Counsel submitted the affidavit of Dr. Gillian Blair who opined that based on existing information Mr.Thompson had shown a deteriorating mental status since 1985, was likely suffering from schizophrenia at the time of the crime, and further expert evaluation was required. (Post-conviction Transcript, Vol. II, p. 199, 219). The post-conviction court denied the requested funding. (Pretrial Hearing, Jan. 16, 1995, p. 6).

Prior to the post-conviction hearing the prosecutor talked to the medical staff at Riverbend and reviewed Mr. Thompson's medical records. Mr. Thompson was taken off his anti-psychotic medication shortly after the prosecutor's visit. At the post-conviction hearing the prosecution argued that since Mr. Thompson was off his medication he was not mentally ill (Post-conviction Transcript, Vol. II, p. 247), and was malingering mental illness. Because Mr. Thompson was denied funding for mental health expert assistance he could not counter the state's position that Mr. Thompson was malingering mental illness nor demonstrate prejudice

from trial counsel's deficient performance. The post-conviction court dismissed the petition and denied relief. Mr. Thompson's post-conviction appeals were denied.

Although Mr. Thompson attempted to litigate his mental health related claims in prior state proceedings a combination of ineffective assistance of trial counsel and the court's denial of expert assistance impaired his abilty to adequately plead and prove his claims. Compounding these errors the prosecution actively denied that Mr. Thompson was mentally ill and misrepresented the Riverbend medical records which documented his illness. The State of Tennessee now acknowledges Mr. Thompson's severe mental illness and incompetence. Dr. Arney's competency evaluation affidavit clearly states that Mr. Thompson's illness has been long-standing and presents a danger to himself or others. This was the explanation for the crime which trial counsel and the jury had been seeking. Mr. Thompson's case should now be reviewed in light of this new evidence.

Although T.C.A. § 27-7-103 provides a statute of limitation requiring a petition for writ of *error coram nobis* to be filed within one year of the date the judgment becomes final, to apply the statute of limitations in this context would be unconstitutional in this case. Burford v. State, 845 S.W.2d 204 (Tenn. 1992). In Burford, the Tennessee Supreme Court held that a statute of limitation may be unconstitutional as applied:

> Although we have determined that the statute is constitutional, it is possible that under the circumstances of a particular case, application of the statute may not afford a reasonable opportunity to have the claimed issue heard and decided.

Burford, 845 S.W.2d at 208; citing Michel v. Louisiana, 350 U.S. 95 (1955). The Court has directed that the application of Tennessee's statute of limitations must comport with due process. Burford v. State, 845 S.W.2d 204 (Tenn. 1992). The Court requires that

> before a state may terminate a claim for failure to comply with procedural requirements such as statutes of limitations, due process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner... [T]he test is whether the time period provides

> an applicant a reasonable opportunity to have the claimed issue heard and determined.

Burford, id. at 208; see also Workman v. State, No. W2001-00774-SC-R11-PD (Tenn. March 30, 2001). This determination is made on a case-by-case basis by weighing a petitioner's liberty interest in collaterally attacking the constitutional violations occurring during the conviction process against the state's interest in preventing the litigation of stale and fraudulent claims.[2] Sands v. State, 903 S.W.2d 297, 301 (Tenn. 1995).

In order to insure that Tennessee's post-conviction statute of limitations comports with constitutional principles, the Tennessee Supreme Court set forth the following due process rule and analysis:

> due process prohibits the strict application of the post-conviction statute of limitations to bar a petitioner's claim when the grounds for relief, whether legal or factual, arise after ... the point at which the limitations periods would normally have begun to run.

Sands v. State, 903 S.W.2d 297, 301 (Tenn. 1995). To determine whether due process prohibits the strict application of the statute of limitations courts must (1) determine when the limitations period would normally have begun to run; (2) determine whether the grounds for relief actually arose after the limitations period would normally have commenced; and (3) if the grounds are "later-arising", determine if, under the facts of the case, a strict application of the limitations period would effectively deny the petitioner a reasonable opportunity to present the claim. Id.

---

[2] In Burford, the court found the state's interest in the administrative efficiency and economy created by a time bar insufficient to outweigh the petitioner's interest, 845 S.W.2d at 209, holding that "where an alleged infringement of a constitutional right often affects life or liberty, conventional notions of finality associated with civil litigation have less importance and the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the constitution." Id. citing Sanders v. United States, 373 U.S. 1, 8, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963); I.N.S. v. Chadha, 462 U.S. 919, 944, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983).

Following Burford, application of the one year statute of limitation to Mr. Thompson's petition for writ of *error coram nobis* would be unconstitutional as applied. It was only recently that the State of Tennessee acknowledged Mr. Thompson's long-standing mental illness, declared him incompetent and appointed him a conservator. The State of Tennessee has no legitimate interest in creating procedural barriers to review of Mr. Thompson's mental health related claims.[3] See Reynolds v. Berry, 146 F.3d 345, 347(6th Cir. Ky. 1998); Rickman v. Dutton, 864 F.Supp. 686, 706 (M.D.Tenn. 1994) aff'd 131 F.3d 1150 (6th Cir. 1997)(Giglio claim not defaulted because state has no legitimate interest in creating procedural barriers to review of issues involving the state's presentation of false testimony). Mr. Thompson has diligently brought these facts to the attention of the state court. Mr. Thompson is entitled to an evidentiary hearing on this new evidence. See Workman v. State, supra.

WHEREFORE, Mr. Thompson respectfully requests that this Court grant him an evidentiary hearing on his mental health related claims in light of the State's recent concession that Mr. Thompson is incompetent and has long suffered from a debilitating mental illness or grant such other relief as is just and equitable.

[3] Additionally, the State waived the application of a procedural bar defense by withholding the information necessary for Petitioner's claims and asserting that Mr. Thompson was malingering mental illness until long after the statute of limitations had run and after Petitioner's state post-conviction proceedings were completed.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

BY: Dana C Hansen

Dana C. Hansen, B.P.R. # 19098
Asst. Federal Community Defender
530 S. Gay Street, Suite 900
Knoxville, TN 37902
(865)637-7979

CERTIFICATE OF SERVICE

I, Dana C. Hansen, hereby certify that a true and correct copy of the foregoing document was mailed to:

Glenn Pruden, Esquire
Office of Attorney General and Reporter
Criminal Justice Division
425 Fifth Avenue North
Cordell Hull Building, Second Floor
Nashville, TN 37243-0493

Jennifer Smith, Esquire
Office of Attorney General and Reporter
Criminal Justice Division
425 Fifth Avenue North
Cordell Hull Building, Second Floor
Nashville, TN 37243-0493

this the 23 day of May 2001, by postage prepaid delivery.

Dana C. Hansen

ATTACHMENT

"A"

Richland Creek Psychiatric Associates, LLP
4535 Harding Road
Suite 210
Nashville, Tennessee 37205
Telephone 615-383-0095
Facsimile 615-383-0189
Michelle B. Batte, Practice Manager

Brian R. Swenson, M.D.
Paula S. Nunn, M.D.
Richard E. Rochester, M.D.
Jeri E. Fitzpatrick, M.D.
Johnna C. Shadoin, L.C.S.W.
Casey C. Arney, M.D.
Terry M. Huff, L.C.S.W.
Jack L. Koch, Jr., M.D.
Rebecca J. Roberts, M.D.
Hal C. Schofield, M.D.

January 19, 2001

Kelley Blevins Baker, Staff Counsel
State of Tennessee
Dept. of Corrections
4th Floor
Rachel Jackson Building
26th Avenue North
Nashville, Tennessee 37243

Re: Greg Thompson
TDOC: 108406

Dear Ms. Baker

This letter serves as a physicians recommendation for conservatorship for Greg Thompson. Mr. Thompson is a 38 year old gentleman with a long history of Bipolar Disorder and psychotic symptoms. He has severe symptoms of mania with racing tangential thoughts, pressured speech, in delusional grandiosity. He becomes severely agitated and hostile at times. He has assaulted staff in the recent past which appears to be related to his mental illness. It has been recommended by the treatment review committee to be treated with involuntarily medication and have a conservator assigned to him.

It is my opinion that Mr. Thompson lacks the insight into his illness to make decisions regarding mental health and medical treatment at this time. I believe that a conservator is necessary to make appropriate decisions regarding his care and without such conservatorship, harm is likely to come to Mr. Thompson or others as a result of his mental illness. Mr. Thompson's illness is chronic and fluctuating in nature, therefore extended periods of marked improvement are not expected.

Sincerely,

Casey C. Arney, M.D.

CCA/slr

Sworn before me this 19th day of January, 2001.
Michelle H Batte
Notary Public
1/24/05

TENNESSEE DEPARTMENT OF CORRECTION
MENTAL HEALTH TREATMENT REVIEW COMMITTEE

INMATE NAME Thompson, Greg NUMBER 108406 DATE OF BIRTH 12/13/61 SEX MALE

I. REPORT OF INITIAL PHYSICIAN MEETING WITH INMATE:

Initial Physician's Recommendation(s):
Pt. w/ hx bipolar disorder becomes severely psychotic and violent at times with poor insight into illness. Please send for conservatorship and involuntary meds.

Inmate's Signature — Date

Physician's Signature — 1/5/01 Date

II. REPORT OF SECOND PHYSICIAN'S MEETING WITH INMATE:

Second Physician's Recommendation(s):
Recommendation is for involuntary medication and conservatorship.

Second Physician's Signature — 1-8-01 Date

III. REPORT OF TREATMENT TEAM MEETING:

Treatment Team Recommendation(s):

Signature(s) of Treatment Team Member(s):	Dates	Comments
Title		
Title		
Title		
Title		

RC expires 03-17-01
after requesting conservatorship meds to be drafted

RDA-1458
TB-3329 (5/89)
Page 1 of 2 pages

Thompson 108406

MENTAL HEALTH TREATMENT REVIEW COMMITTEE

IV. REPORT OF TREATMENT REVIEW COMMITTEE:

Treatment Review Committee Recommendation(s): TRC was asked to re-evaluate this pt for determination of his competence to give informed consent and the need for a conservator. At this time he is very confused about his illness and the kind of treatment he needs. He is actively psychotic, although less psychotic than when previously evaluated. It is our conclusion and recommendation that he is in need of psychiatric medication that needs to be given involuntarily. Finally, a conservator is recommend.

Signature of Treatment Review Committee:	Dates:	Comment(s):
Lawrence J Haines, PhD Title	1/8/01	
M Roberts - MD. Title	1-8-01	
Title		

INMATE RIGHTS ADVOCATE COMMENT(S):

Pt. cooperative. Pt rights were violated.

Cathy A DeKuba: BA CC HP KQIC 01-08-01
Inmate Rights Advocate Signature — Date

White Copy: Health Record
Yellow Copy: Treatment Team Coordinator
Pink Copy: Inmate Rights Advocate

CDC-3329 (5/89)
Page 2 of 2 pages

RDA-1458

ATTACHMENT

"B"

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

PART IV

RECEIVED
MAR 14 2008
CIVIL RIGHTS AND CLAIMS DIV
ATTORNEY GENERAL'S OFFICE

STATE OF TENNESSEE
DEPARTMENT OF CORRECTION,
Petitioner,

v.

IN THE MATTER OF
GREG THOMPSON, #108406,
Respondent.

NO. 01-1041-IV

FILED
2008 APR -3 PM 3:27
KEITH S. HOLLIS
CHANCERY CLERK
D.C.

PETITION FOR APPOINTMENT OF CONSERVATOR

Comes now the Petitioner, the Tennessee Department of Correction, by and through the Office of the Attorney General and Reporter for the State of Tennessee, and respectfully states as follows:

1. The Respondent, Greg Thompson is a thirty-nine (39) year old male presently incarcerated at Lois DeBerry Special Needs Facility, 7575 Cockrill Bend Industrial Road, Nashville, Tennessee 37209-1057. He is sentenced to death for first degree murder.

2. The Respondent is in need of protection and assistance by reason of the illness rendering him presently disabled as defined in T.C.A. Section 34-11-101(7).

The Respondent has been diagnosed by Dr. Casey Arney, his treating psychiatrist, as suffering from a long history of Bipolar Disorder and psychotic symptoms.

The Respondent is unable to understand the need for treatment with psychotropic medication or the correlation between the medication and the cessation of his symptoms. He has little understanding of how his medication works, and minimal insight into the presence of his illness.

It is the opinion of Dr. Casey Arney, his treating psychiatrist, that the Respondent is incapable of making rational decisions regarding his treatment needs and is in need of a conservator to monitor his medical and psychiatric treatment.

APPENDIX

"C"

IN THE CIRCUIT COURT FOR COFFEE COUNTY
MANCHESTER, TENNESSEE

GREGORY THOMPSON,	)	
	)	
Petitioner,	)	
	)	Case No: 31,213
vs.	)	
	)	
RICKY BELL, Warden,	)	
	)	
Respondent.	)	

REPLY TO RESPONSE TO PETITION FOR WRIT OF *ERROR CORAM NOBIS*

Comes now Petitioner, Gregory Thompson, through undersigned counsel, and files this Reply to Respondent's response to petition for a writ of *error coram nobis*. In support hereof Mr. Thompson shows as follows:

I. Respondent has Overlooked the Evidence Concerning Mr. Thompson's Mental State at the Time of the Offenses.

Respondent initially argues that Mr. Thompson neither alleges nor presents evidence that his mental problems "existed at the time of the crime (January 1, 1985) nor during the trial (August 20 - 22, 1985)." (Response, p. 2-3). Respondent has, however, overlooked both the allegation and evidence of exactly that. These are noted on page 8 of the Petition for Writ of *Error Coram Nobis*. There Mr. Thompson recounts the affidavit of Dr. Gillian Blair, which was submitted as part of the post-conviction proceedings.[1] As the Petition states, in that affidavit Dr. Blair

> opined that based on existing information Mr. Thompson had shown a deteriorating mental status since 1985, *was likely suffering from schizophrenia at the time of the crime*, and further expert evaluation was required. (Post-conviction Transcript, Vol. II, p. 199, 219). The post-conviction court denied the requested funding. (Pretrial Hearing, Jan. 16, 1986, p. 8).

(Petition, p. 8) (emphasis added) see also Affidavit of Dr. Blair; Attachment A. Since Dr. Blair is an expert, her opinion is evidence. See Tenn. R. Evid. 702. One suspects also that this would be Dr. Arney's opinion; in his affidavit Dr. Arney, a state psychiatrist, describes Mr. Thompson as having "a *long history* of Bipolar Disorder and psychotic symptoms." (Competency Evaluation of Greg Thompson by Casey Arney, M.D.; Attachment B) (emphasis added). Additionally, Faye E. Sultan, Ph.D., has reported that "Mr. Thompson was displaying

[1]Dr. Blair's affidavit was submitted in support of a motion for funding of expert assistance. The motion was denied.

significant signs of mental illness from the time he was a small child." (Report of Dr. Faye E. Sultan, Ph.D., Attachment C). Significantly, Dr. Sultan reports that

> Mr. Thompson was suffering serious mental illness at the time of the 1985 offense for which he has been convicted and sentenced. This mental illness would have substantially impaired Mr. Thompson's ability to conform his conduct to the requirements of the law.

Id.; see also Deposition of Dr. Sultan, Attachment D. Dr. Barry Crown, Ph.D., reports that "Mr. Thompson suffers from a major mental disorder/thought disorder, to wit, that he suffers from schizoaffective disorder-bipolar subtype with organic components." (Report of Dr. Barry-Crown, Ph.D., Attachment E). Onset of this disorder typically occurs in early adulthood. Id. Expert opinion clearly indicates that Mr. Thompson suffered from mental illness at the time of the crime. A combination of ineffective assistance of counsel, denial of resources, and state misconduct prevented the jury from learning this critical fact. A hearing is necessary to allow proper resolution of this issue.

In short, contrary to Respondent's assertion, Mr. Thompson presented both an allegation *and* evidence – in the form of expert opinion – that his mental condition existed in 1985 and that it does go to the issue of guilt of first degree murder and sentencing for any crime.

II. Respondent has Mistakenly Described a Claim of Ineffective Assistance of Counsel as one of Denial of Psychiatric Assistance.

Respondent goes on to argue that Mr. Thompson's ineffective assistance of counsel claim lacks merit because he has not shown why a qualified and competent psychiatrist or mental health expert was not hired by trial counsel. (Response, p. 3). Respondent apparently believes that *Mr. Thompson* must explain the actions of an attorney whose performance was, according to Mr. Thompson's claim, constitutionally deficient. This is not the case. The very point of the claim is that trial counsel did not explain – and *could not* satisfactorily explain – why he did not use Mr. Thompson's scarce court-ordered resources to hire a real psychiatrist with medical training, and instead engaged an industrial psychologist whose practice had consisted largely of something so tangential as evaluating the work potential of social security disability claimants.

Also, contrary to Respondent's claim, Mr. Thompson's psychiatric problems have not "been *litigated* at every stage of his criminal trial and post-conviction proceedings." (Response, p. 4) (emphasis added). The issue was *not* litigated at trial; "litigation" is by its very nature

adversarial. See e.g. Davis v. Liberty Mutual Insurance Company, 38 S.W.3d 560, 565 (Tenn. 2001). Mr. Thompson's trial was hardly adversarial on the crucial issue of psychiatric evidence to support a first degree murder charge; according to the competent evidence now presented by Drs. Arney, Blair, Sultan, and Crown, this matter should have been properly raised -- and counsel should have been properly assisted -- by a psychiatrist, rather than an industrial psychologist. Respondent had at its disposal the entire psychiatric staff of Middle Tennessee Mental Health Institute, while counsel's failure to employ a psychiatrist left Mr. Thompson with woefully inadequate assistance with which to counter Respondent.

Nor did the post-conviction proceedings constitute "litigation" in the true sense of the word. Mr. Thompson was denied proper funding for experts who could have evaluated him and testified with precision regarding his mental state at the time of the offenses. Lacking this assistance, Mr. Thompson was unable to prove his claim to the required standard. As important, Dr. Arney's affidavit calls into question Mr. Thompson's competency during post-conviction proceedings; Dr. Arney therein affirms that Mr. Thompson "lacks the insight into his illness to make decisions regarding mental health and medical treatment at the time" and that he has "a long history" of severe mental illness. (Petition, Attachment A, first page). According to the Tennessee Supreme Court this allegation impugns Mr. Thompson's ability to raise any such claim in post-conviction proceedings -- "a petitioner who was incompetent throughout the limitations period would be denied the opportunity to challenge his conviction in a meaningful manner..." Watkins v. State, 903 S.W.2d 302, 305-6 (Tenn. 1995). The Tennessee Supreme Court more recently explained that under its holding in Watkins, "due process requires that some reasonable opportunity to assert those rights be afforded." Seals v. State, 23 S.W.3d 272, 278 (Tenn. 2000). Respondent's allegation that the claim has been litigated at "every step of his criminal trial and post-conviction proceedings" (Response, p. 2) is, therefore, inaccurate. Davis v. Liberty Mutual, 38 S.W.3d at 565.

Moreover, at every step of his criminal trial and post-conviction proceedings the State affirmatively misrepresented Mr. Thompson's mental state. Throughout Mr. Thompson's court proceedings the prosecutor engaged in false and/or misleading questioning and use of reports to argue that Mr. Thompson was competent and not mentally ill. The prosecutor misled Mr. Thompson's judge and jury despite having evidence to the contrary and without revealing such evidence, thereby committing gross misconduct. For example, during Mr. Thompson's post-

conviction proceedings he attempted to prove his claim of ineffective assistance of counsel based on a failure to adequately investigate his mental health. The state argued that Mr. Thompson was not mentally ill, was competent at the time of trial, was presently competent, and was competent to be executed, despite ten years of records to the contrary. Institutional records clearly illustrate Mr. Thompson's "significant history of psychosis requiring multiple medications." (Attachment F) Mr. Thompson's mental health treatment plan contemporary to the post-conviction hearing reveals a diagnosis of schizophrenia with presenting problems of auditory and visual hallucinations and paranoid ideation. (Attachment G) The treatment plan called for pharmacotherapy and psychotherapy. Mr. Thompson had a well-documented history of hallucinations and delusional thinking, such as: believing the guards are devils; seeing and hearing devils, god and women in his cell; hearing voices; believing his cell is contaminated by radioactive electricity; believing the guards are aliens from outer space; displaying bizarre feelings that his idea for the space shuttle was stolen from him; believing the guards were people from his childhood and feeling confused that they could not remember while he could; believing that he wrote songs for Elvis and Michael Jackson; requesting oil to treat his dry stomach and esophagus; reporting that he had fought a war between good and evil and had won, making everybody happy; refusing to bathe and splattering feces and urine over his cell; eating feces; feeling distressed about his health because he had eaten feces; engaging in self-mutilation; and attempting suicide. (Attachment H) Prior to the post-conviction evidentiary hearing, the prosecutor went to Riverbend to talk to staff about Petitioner's behavior and to review the files.[2] Clearly, the State knew that Mr. Thompson was mentally ill, although the prosecutor argued to the contrary.

Records reflect that since his incarceration Mr. Thompson has almost always been on medication. However, no antipsychotic medication was prescribed during the months of February and March, 1998. (Attachment I) The state post-conviction hearing took place March 27 and 28, 1998. The prosecutor argued at the hearing that since Mr. Thompson was off his medication, he was not mentally ill. *See e.g.* Post-conviction Transcript, v. II, p. 247. Dr. Blair testified that a person on the correct dosage of medication can be stable and function very well,

[2]Curiously, Mr. Thompson was taken off his medication shortly after the prosecutor's visit, and was not on medication at the time of his state post-conviction hearing. Not surprisingly, after that hearing, when the residual effect of prior treatment had ended, Mr. Thompson again descended into mania and the State of Tennessee resumed his medication.

however, that person still has the disease. (Post-conviction Transcript, v. II, p. 236). Dr. Blair further testified that she expected the effects of the medication to remain for a period of time after consumption ceased. (Id. at 242). The State presented no evidence to support its contrary allegations.

In April 1996, upon arriving back in Riverbend, Mr. Thompson once again began to display psychotic symptoms. (Attachment J) By the end of April, Mr. Thompson presented with paranoia and it was recommended that he restart the Mellaril which had controlled his mania with psychosis. (Attachment K) Mr. Thompson had been found pacing his cell and was agitated, stating that he had been listening to the radio for the last six years for twenty-four hours a day and now he was radioactive. While at the infirmary observation cell, Mr. Thompson became more agitated and paranoid stating he could feel that the lights were irradiating him. It was noted that Mr. Thompson had become progressively more hypomanic since April. He was sent to the special needs medical unit on an emergency basis. (Attachment L) At special needs medication was prescribed without his consent because he lacked the capacity to make decisions and he was presenting a danger to himself and others. (Attachment M) Because Mr. Thompson had been taken off his medication for the time period surrounding the post-conviction hearing, he had once again entered a manic episode.

Mr. Thompson's descent into mania was predictable based on his medical records. Those records were reviewed by the prosecutor and were known at the time of the post-conviction hearing. However, defense counsel was denied the expert assistance necessary to rebut the prosecution's medically unsound assertions. Had the judge or defense counsel been informed of Mr. Thompson's true mental status, the outcome of the proceeding would have been different. Because the State kept this evidence from the judge and defense counsel, in essence committing fraud on the court, there was no adversarial determination of Mr. Thompson's mental health. The State has now admitted Mr. Thompson's long-standing mental illness and incompetence. This should be considered by the Court.

III. The State's Admission that Mr. Thompson Suffers from a Long-Standing Mental Illness and is Incompetent is "Newly Discovered Evidence" Which Should Be Considered by the Court.

Respondent finally asserts that the *coram nobis* petition is barred by the statute of limitations because, in Respondent's opinion, Dr. Amey's affidavit is not "newly discovered evidence." Case law, however, flatly contradicts the argument that the affidavit is not new

evidence. An admission by an adversarial party or witness that the testimony given at trial could have been untrue can be "newly discovered evidence." See State v. Parchman, 973 S.W.2d 607, 611 (Tenn. Crim. App. 1997). Here, as in Workman v. State, 41 S.W.3d 100 (Tenn. 2001), Mr. Thompson is not at fault for not bringing the evidence earlier, since State witnesses did not previously admit, and in fact denied, the seriousness of his mental state and the "long history" – in Dr. Amey's words – of his psychiatric problems. Workman, 41 S.W.3d at 103. The State has changed its opinion of Mr. Thompson's mental state, as it is now and possibly as it was at the time of the offense. Mr. Thompson is without fault in not presenting this evidence earlier. State v. Mixon, 983 S.W.2d 661, 669 (Tenn. 1999). Additionally, no state court has ever held a full and fair hearing to evaluate the strength of Mr. Thompson's claim – which is now supported by State's admission – with the necessary funding and competent counsel to ensure expert psychiatric opinion and assistance. Id. A hearing is necessary.

In Burford v. State, 845 S.W.2d 204 (Tenn. 1992), the Tennessee Supreme Court ruled that

> before a state may terminate a claim for failure to comply with procedural requirements such as statutes of limitations, due process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner... It is possible that under the circumstances of a particular case, application of the statute may not afford a reasonable opportunity to have the claimed issue heard and decided.

Burford, 845 S.W.2d at 208. Application of the statute of limitations here will mean that the issue of Mr. Thompson's capacity to commit first degree murder and culpability will never be heard to the extent required by due process. Sands v. State, 903 S.W.2d 297, 301 (Tenn. 1995).

Moreover, in Workman the Court held that

> In our view, the due process considerations discussed in Burford, and more recently in Seals v. State, 23 S.W.3d 272 (Tenn. 2000) and Williams v. State, [44] S.W.3d [464] (Tenn. 2001), released just today, apply with even greater force when the statute of limitations is being applied in a capital case to bar a claim that newly discovered evidence may prove that the defendant is actually innocent of the capital crime of which he was convicted.

Workman, 41 S.W.3d at 102. Although Respondent attempts to distinguish Workman by pointing out that the newly discovered evidence related to "factual innocence" (Response p. 8) a showing of "factual innocence" is not required to grant a hearing. Indeed Mr. Thompson need only show that due process requires his claim be heard. Burford; Sands; supra. Once granted

a hearing, Mr. Thompson then must show that "newly discovered evidence may have resulted in a different judgment"[4] and that he "was without fault" in failing to present the newly discovered evidence" earlier. Workman, 41 S.W.3d at 104 citing T.C.A. §40-26-105; State v. Mixon, 983 S.W.2d 661, 673 n. 17 (Tenn. 1999). If he makes such a showing, Mr. Thompson will be entitled to a new trial. Id.

In short, the statute of limitations would violate due process if applied here. Mr. Thompson's *coram nobis* petition should be heard in full.

WHEREFORE, Mr. Thompson respectfully requests that this Court grant him an evidentiary hearing on his mental-health related claims in light of the State's recent concession that Mr. Thompson is incompetent and has long suffered from a debilitating mental illness or grant such other relief as is just and equitable.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

BY: Dana C. Hansen

Dana C. Hansen, B.P.R. # 19088
Asst. Federal Community Defender
530 S. Gay Street, Suite 900
Knoxville, TN 37902
(865) 637-7979

[4]Unlike Workman, at a hearing Mr. Thompson need not meet the vastly burdensome requirements applied to actual innocence claims, *i.e.*, those of Schlup v. Delo, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995). While Mr. Workman faces those requirements, which permit relief only in "extraordinary" and "rare" cases, Schlup, 513 U.S. at 321, Mr. Thompson must meet the lesser burden of showing ineffective assistance of counsel. The greater likelihood that Mr. Thompson can meet his burden and obtain relief makes a hearing on the merits all the more imperative.

CERTIFICATE OF SERVICE

I, Dana C. Hansen, hereby certify that a true and correct copy of the foregoing document was mailed to:

Chris Vernon, Esquire
Assistant District Attorney
14th Judicial District
307 S. Woodland
P. O. Box 147
Manchester, TN 37349-0147

C. Michael Layne, Esquire
District Attorney General
14th Judicial District
307 S. Woodland
P. O. Box 147
Manchester, TN 37349-0147

this the 19 day of July, 2001, by postage prepaid delivery.

Dana C. Hansen

ATTACHMENT

"A"

AFFIDAVIT

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Comes the Affiant, Dr. Gillian Blair, and affirms under oath the following which is true to the best of my knowledge, information and belief:

1. I am a licensed Psychologist with a private practice in Nashville, Tennessee. My business address is 1500 21st Avenue South, Suite 320, Nashville, Tennessee 37212.

2. I received a Bachelor of Science Degree from the London School of Economics and Political Science, University of London, England in 1983, a Masters Degree in Psychology from Vanderbilt University in 1985, and a Ph.D. from Vanderbilt University in 1988. I have been a licensed Psychologist in the State of Tennessee since 1988.

3. In my professional work, I have been involved with forensic psychology in the capacity of a Psychological Examiner at Middle Tennessee Mental Health Institute from 1987-1988, and as a private practitioner since that time. I have given testimony and have been qualified as an expert to testify in the courts of Tennessee regarding such issues as sanity at the time of the offense; ability to form specific intent, competency to stand trial, and the presence and effect of learning disabilities, in cases in Davidson, Putnam, Williamson, Lawrence, and Shelby Counties.

4. I have been approached by Robert Warner and asked to give an opinion regarding whether or not there is a need for psychological evaluation of his client Gregory Thompson.

5. I have reviewed Mr. Thompson's institutional and medical records at Riverbend Maximum Security Institution where he is currently incarcerated. The records revealed a positive family history for psychiatric disturbance. Extent and diagnoses are unknown. Apparently both parents are deceased, one from a self-inflicted gunshot wound. The medical progress notes revealed Mr. Thompson's escalating psychiatric problems since incarceration. Three psychiatrists (Drs. Brad Diner, Roy Deal, and Steve Humble) employed at RMSI have treated Mr. Thompson

[1]
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for psychosis. Adjustment difficulties were noted in Mr. Thompson during November 1985. In June 1986 a suicide gesture/attempt occurred. By June 1988 Mr. Thompson was diagnosed as exhibiting a Bipolar Disorder. The possibility of a thought disorder was raised in July 1988. By September Dr. Diner reported that Mr. Thompson was psychotic "looks more schizophrenic than manic." Symptoms described included thought blocking, suspiciousness, inappropriate affect, hallucinations and agitation. Mr. Thompson's behavior apparently deteriorated even further. Ideas of self harm were noted in January 1989, along with increased auditory hallucinations and persecutory ideas. By May 1989, hygiene was noted to be poor. In September 1989 Mr. Thompson set fire to his cell and received burns to his face and hands. A month later he was noted to be hostile, and agitated with rapid speech and loosening of associations. His mental status rapidly deteriorated to include flight of ideas, marked tangentiality, grandiose delusions, thought projection, obsessive ideas and paranoia.

6. Since late 1989 the medical record indicated a rapid cycling pattern of psychosis. At times Mr. Thompson has been noted to be withdrawn, morbid and expressing suicidal ideation, if not direct plans. More typically, he has vacillated from a basal mental status that included low level auditory hallucinations, impaired insight and judgment and compromised coherence to a frankly psychotic state. At these times Mr. Thompson appeared agitated, hostile, and uncooperative. Speech was noted to be intrusive, pressured and loud. Thoughts were grandiose and tangential with marked loosening of associations and flight of ideas. Paranoia was evident. The presence of hallucinations (both auditory and visual) were often denied, but low level ongoing auditory hallucinations were suspected by the examining psychiatrist. Mr. Thompson has presented something of a diagnostic dilemma. He has been variously diagnosed as Bipolar Affective Disorder, Schizo-affective Disorder, and Schizophrenia Paranoid type. The possibility of malingering has been raised, however Dr. Humble stated 8/9/90 that such a diagnosis "fails to explain the psychotic symptoms." Current medications are Lithium, Haldol, and Cogentin. Mr. Thompson sporadically refused to take medication as prescribed. It should be noted that Lithium has been prescribed intermittently since 1986. On occasion Mr. Thompson has been secluded and

subdued for the protection of both self and others. The writings of Mr. Thompson are consistent with the above description of a psychotic individual.

6. I have read the affidavit of Brock Mehler of Capital Case Resource Center, with whom I have worked on previous cases, and whose investigations and assessments I have found to be accurate. The brief history of traumatic childhood events and head injuries, and the self-reported symptoms of neurological impairment, sleep disturbance, hallucinations and disordered thinking are consistent with the psychotic behavior noted in the institutional and medical records, and raise an inference that Mr. Thompson's problems may have a neurological as well as psychological basis. A full social and medical history would be an essential part of any assessment of Mr. Thompson's mental condition.

7. The evidence presented suggests that Mr. Thompson is grossly impaired, and it is my professional opinion that he is in need of a full psychological evaluation.

8. If Mr. Thompson is found to be suffering from neurological or psychological impairment as described above, it is likely that some degree of such impairment would have existed at the time of the offense and would have been a significant factor in determining whether or not Mr. Thompson was able to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law when he committed the homicide of which he stands convicted. Such impairment would have had a direct bearing upon whether he was capable of knowingly and intelligently waiving his constitutional rights to counsel and to remain silent at the time of his arrest. It would also have been significant mitigating evidence which should have been considered in the determination of whether a penalty less than death was appropriate in his case.

9. In order to arrive at an adequate understanding of Mr. Thompson's neurological and psychological condition, it would be necessary to administer a full battery of tests and conduct a mental status interview. The psychological tests and interview could be administered at a cost of $850.00. My fee for consultation, and for court testimony, if required, is $100.00 per hour. As noted, a complete social and medical history must be compiled in order to adequately document Mr. Thompson's psychological development, incidents of trauma, and evidence of pre-existing

conditions. The investigation necessary to compile such a history need not necessarily be done by a psychologist, but should be performed by a person skilled in social/psychological investigation.

FURTHER THE AFFIANT SAITH NOT.

Dated: 11/21/90

Gillian Blair

DR. GILLIAN BLAIR, AFFIANT

Sworn to and subscribed before me on this the 21st day of November, 1990.

Janet L. Barton

NOTARY PUBLIC

My Commission Expires: 5/22/93

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ATTACHMENT

"B"

Richland Creek Psychiatric Associates, LLP

4535 Harding Road
Suite 230
Nashville, Tennessee 37205
Telephone 615-383-0095
Facsimile 615-383-0189
Michelle H. Batte, Practice Manager

Brian R. Swenson, M.D.
Paula S. Nunn, M.D.
Richard E. Rochester, M.D.
Jeri E. Fitzpatrick, M.D.
Johanna C. Shadoin, L.C.S.W.

Casey C. Arney, M.D.
Terry M. Huff, L.C.S.W.
Jack L. Koch, Jr., M.D.
Rebecca J. Roberts, M.D.
Hal C. Schofield, M.D.

January 19, 2001

Kelley Blevins Baker, Staff Counsel
State of Tennessee
Dept. of Corrections
4th Floor
Rachel Jackson Building
26th Avenue North
Nashville, Tennessee 37243

Re: Greg Thompson
TDOC: 108406

Dear Ms. Baker

This letter serves as a physicians recommendation for conservatorship for Greg Thompson. Mr. Thompson is a 38 year old gentleman with a long history of Bipolar Disorder and psychotic symptoms. He has severe symptoms of mania with racing tangential thoughts, pressured speech, in delusional grandiosity. He becomes severely agitated and hostile at times. He has assaulted staff in the recent past which appears to be related to his mental illness. It has been recommended by the treatment review committee to be treated with involuntarily medication and have a conservator assigned to him.

It is my opinion that Mr. Thompson lacks the insight into his illness to make decisions regarding mental health and medical treatment at this time. I believe that a conservator is necessary to make appropriate decisions regarding his care and without such conservatorship, harm is likely to come to Mr. Thompson or others as a result of his mental illness. Mr. Thompson's illness is chronic and fluctuating in nature, therefore extended periods of marked improvement are not expected.

Sincerely,

Casey C. Arney, M.D.

CCA/slr

Sworn before me this 19th day of January, 2001.

Michelle H Batte
Notary Public
1/24/03

TENNESSEE DEPARTMENT OF CORRECTION
MENTAL HEALTH TREATMENT REVIEW COMMITTEE

INMATE NAME Thompson, Greg NUMBER 108406 DATE OF BIRTH 12/13/61 SEX male

I. REPORT OF INITIAL PHYSICIAN MEETING WITH INMATE:

Initial Physician's Recommendation(s):

Pt. w bipolar disorder becomes severely psychotic and violent at times with poor insight into illness. Please send for conservatorship and involuntary meds.

Inmate's Signature — Date

Physician's Signature — 1/5/01 Date

II. REPORT OF SECOND PHYSICIAN'S MEETING WITH INMATE:

Second Physician's Recommendation(s):

Recommendation is for involuntary medication and conservatorship.

Second Physician's Signature — 1-8-01 Date

III. REPORT OF TREATMENT TEAM MEETING:

Treatment Team Recommendation(s):

Signature(s) of Treatment Team Member(s):	Dates:	Comments:
Title		
Title		
Title		
Title		

TC expires 03-17-01
letter requesting conservatorship needs to be drafted

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RDA-1458

Thompson 108406

MENTAL HEALTH TREATMENT REVIEW COMMITTEE

IV. REPORT OF TREATMENT REVIEW COMMITTEE:

Treatment Review Committee Recommendation(s): TRC was asked to re-evaluate this pt for determination of his competence to give informed consent and the need for a conservator. At this time he is very confused about his illness and the ~~form~~ of treatment he needs. He is actively psychotic, although less primative than when previously evaluated. It is our conclusion and recommendation that he is in need of psychiatric medication that needs to be given involuntarily. Finally, a conservator is recommend.

Signature of Treatment Review Committee:	Date:	Comment(s):
Lawrence J Haynes, PhD Title	1/8/01	
M Roberts MD. Title	1-8-01	
Title		

INMATE RIGHTS ADVOCATE COMMENT(S):

N/A - cooperative. No rights were violated.

Cathy A Dickens BA CC HP ICQIC 01-08-01

Inmate Rights Advocate Signature Date

White Copy: Health Record
Yellow Copy: Treatment Team Coordinator
Pink Copy: Inmate Rights Advocate

CR-3329 (5/89)
Page 2 of 2 pages

RDA-1458

ATTACHMENT

"C"

UNIVERSITY PSYCHOLOGICAL ASSOCIATES, P.A.
1430 University Executive Park, Suite 690
Charlotte, North Carolina 28262
(704)547-1483/Fax (704)547-0052
Faye E. Sultan, Ph.D., Director

Practicing Psychologists
Carol Armstrong, Psy.D.
John Brodsky, Ph.D.
David Ostow, Ph.D.
Julie A. Pruitt, Ph.D.
Faye E. Sultan, Ph.D.
Judith Thorne, Psy.D.

Psychological Associates
Ruth E. Kappius, M.A.
Gene Hunt, M.A.

Clinical Social Worker
Laura B. Bell, CCSW

PSYCHOLOGICAL REPORT
CLIENT: GREGORY THOMPSON
DATE OF BIRTH: 12-13-63
DATE OF REPORT: 7-22-99

Location of Examination: Riverbend Maximum Security Institution (RMSI)
Nashville, Tennessee
Education of Client: 13 years
Occupation of Client: Death Row Inmate

REFERRAL QUESTIONS:

Mr. Gregory Thompson was referred for psychological evaluation in July, 1998 by attorney Mr. Stephen M. Kissinger of the Federal Defender Services of Eastern Tennessee Incorporated. Mr. Thompson was convicted of murder in 1985. This evaluation was requested to address the following questions:

1. Mr. Thompson's current psychological status
2. Mr. Thompson's likely psychological status and mental state before and surrounding the time of the 1985 offense.
3. Social, environmental, psychological, and economic factors in the life of Mr. Thompson which might have be considered to be mitigating in nature at the time of his trial.

PROCEDURE:

Psychological evaluation of Mr. Thompson was initiated on August 20, 1998. This first evaluation session extended over a period of approximately four hours and consisted of clinical interview and the administration of the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). Some review of prior psychological evaluation records was conducted to establish what formal psychological and neuropsychological testing had been administered to Mr. Thompson. Levels of current intellectual and neuropsychological functioning had been recently assessed by neuropsychologist, Barry Crown, Ph.D., so no attempt was made to replicate this type of assessment.

Following the 8-20-98 initial evaluation session, a very extensive review of legal, military, medical, prison and psychiatric/psychological records was initiated. A list of the documents examined is attached to this report.

It was intended that additional clinical observations of Mr. Thompson would continue to be made as part of this evaluation process. A return visit to RMSI was scheduled to occur in early 1999. By January 1999 Mr. Thompson's psychological condition had deteriorated to such a severe extent that observations relevant to the original referral questions became impossible. Mr. Thompson's lawyers now had questions concerning Mr. Thompson's competence to participate in Habeas Corpus proceedings. Two further interviews were conducted with Mr. Thompson for this limited purpose, on 2-2-99 and 4-7-99, totaling approximately six hours of additional observation. Voluminous Tennessee Department of Corrections mental health, medical, and administrative records were reviewed at this time as well.

As a consequence of this interruption in the evaluation procedure, the psychological evaluation which was initiated for the purposes described in the REFERRAL QUESTIONS section of this report is, as yet, incomplete. Further interviews with Mr. Thompson will be conducted at a late time. Nevertheless, the extensive record review conducted, the ten hours of clinical observations made of Mr. Thompson during the preceding eleven months, the interviews conducted with collateral informants, and the recent and past psychological testing which had been administered provide enough data to make it possible to render professional opinions about Mr. Thompson's mental state at and around the time of the 1985 offense.

CLINICAL OBSERVATIONS:

Mr. Gregory Thompson was cooperative with the assessment procedure. He answered all questions posed to him and appeared to be alert, watchful and interested in the interview process. His speech was sometimes tangential and rambling. Although motor behavior appeared controlled there was a manic quality to his verbalizations. Mr. Thompson was oriented as to person, place and time, but he repeatedly expressed his firm belief that he had written each and every song which played on the radio.

Mr. Thompson displayed symptoms of psychosis during the two subsequent meetings. The details of these sessions will not be reviewed here.

FORMAL PSYCHOLOGICAL TESTING:

The Minnesota Multiphasic Personality Inventory-2 (MMPI-2) was administered to Mr. Thompson on 8-20-98. It had been determined in other examination settings that Mr. Thompson's level of reading competence exceeded the necessary level of 8th grade ability required for proper administration of this test.

The MMPI-2 profile produced by Mr. Thompson is considered valid and appropriate for interpretation. Individuals producing similar profiles are described as experiencing significant psychological difficulties and chronic psychological maladjustment. Such individuals are considered to be highly suspicious of others, often displaying paranoid features. There is indication in this profile of the presence of a thought disorder and the inability to manage emotions. The world is perceived as a threatening and dangerous place and fears are viewed as externally generated and reality-based rather than as a product of an internally generated state. The behavior of such individuals is often described as hostile, aggressive, and rebellious against authority. Poor impulse control, lack of trust in others, and low frustration tolerance may result in such individuals displaying rage in interpersonal relationships.

Individuals producing this testing profile are also described as experiencing depressed mood. There is the strong possibility that such individuals have contemplated suicide and report preoccupation with feeling guilty and unworthy. Testing items were endorsed which suggest memory and concentration problems, and an inability to make decisions.

RELEVANT PSYCHOLOGICAL/PSYCHIATRIC DATA CONTAINED IN RECORDS:

The is substantial documentation throughout the Tennessee Department of Corrections records that Mr. Greg Thompson has suffered from significant mental illness since at least the time of hi his incarceration in 1985. He has been treated almost continuously with some combination of major tranquilizer and/or anti-depressant and/or anti-anxiety medications. He has received a variety of diagnostic labels including Psychosis, Psychosis Not Otherwise Specified, Paranoid Schizophrenia, Mania, Mixed Substance Abuse, Schizophrenia, BiPolar Affective Disorder, Schizoaffective Disorder, Malingering, and Adult Antisocial Behavior. This is clearly indicative of the Tennessee DOC mental health staff's view that Mr. Thompson has experienced major mental illness throughout at least most of his period of incarceration. Further, there is extensive documentation contained in these records of many episodes of bizarre aggressive and/or self-destructive behavior.

INTERVIEWS WITH COLLATERAL WITNESSES:

Five individuals were interviewed (either by telephone or face-to-face) who provided significant supplemental information about the life circumstances and past/present psychological functioning of Mr. Gregory Thompson.

Ms. Maybelle Lamar

Ms. Lamar is Mr. Thompson's maternal grandmother. She was interviewed by telephone on July 21, 1999. Ms. Lamar assumed total responsibility for the care and rearing of Mr. Thompson and his two older siblings after his mother was killed when Mr. Thompson was approximately five years old. Mr. Thompson remained in her home until he entered the military as a young adult.

Ms. Lamar recalls the period following her daughter's fatal automobile accident as one of tremendous strain and disruption for her. She was unable to describe the reaction of the three young children to their mother's death because she "took to my bed" for approximately five or six weeks following the accident. Ms. Lamar was unable to attend to these children in any way at that time. She did not recall how they obtained food or clothing, or whether they were in any distress. Ms. Lamar reported that she was drinking alcohol quite heavily during this period and that she left her bed to resume household activities only because the children contracted a serious medical illness.

Ms. Lamar described Mr. Thompson as displaying significantly "different" behavior when he returned to visit her following his discharge from the U.S. Navy. "Greg didn't act the same". Unlike the 'eager to please', passive, sometimes funny, gentle boy who she had reared, Mr. Thompson was "angry", "sometimes sad". "I don't think he wanted me to know what was going on with him. He mostly just stayed away from me." Ms. Lamar reported that she noticed Mr. Thompson sometimes "staring off into space" or "talking to himself". She would ask him about these behavior. "He'd deny it. He acted like he didn't know what I was talking about." Ms. Lamar recalls being quite concerned about her grandson's mental state during this time. She did not recall ever being asked these questions at any time before or during Mr. Thompson's trial.

Ms. Nora Jean Hall Wharton

Norma Jean Wharton is Mr. Thompson's older sister. A lengthy telephone interview was conducted with her on July 21, 1999. She grew up in the same home as Mr. Thompson and had continuous contact with him throughout his childhood. Mr. Thompson lived briefly in the home of his sister following his discharge from the military.

Ms. Wharton described Mr.Greg Thompson as a highly sensitive, passive, timid, emotionally vulnerable child. She described a childhood of great hardship. According to her report, their grandmother, Ms. Maybelle Lamar was verbally abusive, neglectful of the children's basic daily needs, highly critical, and unable to care properly for the children. Ms. Wharton described many instances of such abuse and neglect. She described the period following their mother's death as particularly chaotic and neglectful, recalling that often there was no food in the home and that the

children would take money from under their grandmother's mattress to go and buy food. In the period following their mother's death, Ms. Wharton reported that her grandmother was continuously drunk and unable to care for her grandchildren. According to Ms. Wharton, Greg Thompson frequently witnessed his sister Nora being beaten by their grandmother.

Ms. Wharton further recalled that she and her younger brother had witnessed the brutal beating and rape of their mother by their biological father. She recalls Greg standing in the scene screaming and sobbing uncontrollably.

Ms. Wharton reported that Greg would frequently cry at school during the early school years, and, as a result, was often the victim of intense mockery from his classmates. Because Ms. Wharton was in the same classroom as her brother she observed these behaviors and often intervened on her brother's behalf. She described Mr. Thompson's response to this abuse as quite passive.

Of particular significance is Ms. Wharton's recollections about Mr. Thompson repeatedly banging his head against the wall of their home on many occasions during their early childhood. This behavior frequently followed their grandmother yelling at Greg "You have the Devil in you." Mr. Thompson would tell his sister that he was attempting to "knock the Devil out" of his head in this way. Ms. Wharton recalls believing that this behavior was quite odd.

Following his discharge from military service, Ms. Wharton described Mr. Thompson's behavior as significantly different than his prior conduct and attitude. She reported several episodes of bizarre behavior which included a sudden intense emotional reaction without obvious external provocation. Mr. Thompson would become extremely angry, would cry and scream for a lenthy period of time, would appear as if he might or actually become quite physically violent or aggressive, and then would suddenly retreat. Ms. Thompson reported this behavior and her concerns about it to her grandmother. Ms. Lamar suggested that Ms. Wharton take her brother to the psychiatric unit of the local hospital for treatment. Ms. Wharton did not attempt to get any treatment for Mr. Thompson and reports feeling quite guilty about this.

Nora Jean Wharton described her own struggles with mental illness throughout the past fifteen years. She has received counseling to assist her in coping with the effects of her abusive childhood and she has been treated with a combination of a major tranquilizer (Stellazine) and anti-depressant medications. She reported that her younger half-sister Kim has also suffered from significant mental illness.

CUSTODY OFFICERS AT RMSI

Following the second interview conducted with Mr. Thompson on 2-2-99, I informally interviewed two custody officers who escorted Mr. Thompson back to his cell. These officers have not as yet been identified by name. Both reported that they were aware that Mr. Thompson was quite mentally ill and that they were concerned about him. They further reported that they believed it would be in his best interest to be housed in a prison facility better equipped to deal with individuals experiencing severe mental illness.

MICHAEL CHAVIS

Federal Defender Services of Eastern Tennessee investigator, Mr. Michael Chavis, was interviewed about his July 29 through August 2 , 1998 interview with Ms. Arlene Cajulao in Honolulu, Hawaii. Ms. Cajulao and Mr. Thompson had an intimate relationship and lived together for approximately four years, from 1980 to 1984.

Mr. Chavis reported that Ms. Cajulao described Mr. Thompson as displaying increasingly bizarre behavior during the latter part of their relationship. Similar to descriptions proved by Ms. Nora Wharton, Ms. Cajulao reported several episodes of "paranoid" and aggressive behavior which had no apparent external antecedent. She reported that Mr. Thompson sometimes thought that people were "after" him. He would close all the curtains in the house because he did not want the person who was "looking" for him to see him through the curtains. She remembers being quite concerned about Mr. Thompson's mental state.

SUMMARY AND CONCLUSIONS :

Mr. Gregory Thompson has experienced symptoms of major mental illness throughout his adult life. Indeed, there is information available which suggests that Mr. Thompson was displaying significant signs of mental illness from the time he was a small child. Self-injurious behavior is reported as early as six years old. There is extensive documentation contained within the records reviewed for this evaluation that Mr. Thompson has experienced a thought disorder and/or an affective disorder of some type for many years.

It is my opinion that Mr. Gregory Thompson is most appropriately diagnosed, according to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, as having Schizoaffective Disorder, Bipolar Type. As is typical of this illness, symptoms became apparent in early adulthood. Mr. Thompson was suffering serious mental illness at the time of the 1985 offense for which he has been convicted and sentenced. This mental illness would have substantially impaired Mr. Thompson's ability to conform his conduct to the requirements of the law.

Further, Mr. Thompson was the victim of severe childhood emotional abuse and physical neglect. His family background if best described as highly neglectful and economically deprived. Mr. Thompson repeatedly witnessed episodes of violence during his childhood in which one family member assaulted or brutalized another. There are significant aspects of Mr. Thompson's social history that have been recognized as mitigating in other capital cases.

It is important to note that all of the information related to Mr. Thompson's early mental illness and social history was available at the time of his 1985 trial.

Faye E. Sultan, Ph.D.

ATTACHMENT

"D"

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

GREGORY THOMPSON, Petitioner, v. RICKY BELL, WARDEN Respondent.	Case No. 4:98-CV-6

DEPOSITION OF FAYE E. SULTAN, PH.D.
(Taken by the Respondent)
Charlotte, North Carolina
July 22, 1999

Reported by: Dayna H. Lowe
Court Reporter
Notary Public

COPY

HUSEBY & ASSOCIATES
A[illegible] LEGAL SERVICES COMPANY
[illegible]

APPEARANCES

For the Petitioner:

STEPHEN M. KISSINGER, Esq.
Assistant Federal Community Defender
Federal Defender Services
of Eastern Tennessee, Inc.
530 S. Gay Street, Suite 900
Knoxville, Tennessee 37902
(423) 637-7979

For the Respondent:

GLENN R. PRUDEN, Esq.
Assistant Attorney General
State of Tennessee
Office of the Attorney General and Reporter
Criminal Justice Division
425 Fifth Avenue North
2nd Floor, Cordell Hull Building
Nashville, TN 37243-0493
(615) 741-3487

Also Present:

Michael Chavis
Investigator
Federal Defender Services of Eastern Tennessee, Inc.

Witness Address:

Faye E. Sultan, Ph.D.
University Psychological Associates, P.A.
8430 University Executive Park Drive, Suite 690
Charlotte, North Carolina 28262

Deposition of FAYE E. SULTAN, PH.D., taken by the Respondent, at the Mecklenburg County District Attorney's Office, 700 East Trade Street, Charlotte, North Carolina, on the 22nd day of July, 1999, at 1:01 p.m., before Dayna H. Lowe, Court Reporter and Notary Public.

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PROCEEDINGS

Whereupon,

FAYE E. SULTAN, PH.D.,

having been duly sworn,

was examined and testified as follows:

EXAMINATION BY COUNSEL FOR RESPONDENT

BY MR. PRUDEN:

Q. Would you please state your name for the record.

A. Faye Ellen Sultan.

Q. And what is your profession?

A. I am a clinical psychologist.

Q. Dr. Sultan, where is your practice located?

A. My practice is located right here in Charlotte,

North Carolina.

Q. And are you a sole practitioner in your practice, or are you in partnership of some sort with others?

A. In the last several years, we actually have operated in partnership. I retain the directorship of the practice. It's called University Psychological Associates. I was, for many years, the sole proprietor of that practice. I'm now a shareholder. And there are a total of nine psychologists and social workers practicing together.

Q. Are there any psychiatrists as part of your practice?

A. No, not at this time. There are not.

Q. You're appearing today pursuant to a subpoena that we served on you?

A. Yes, I am.

MR. PRUDEN: I'd like to make the subpoena Exhibit 1, please.

(Exhibit No. 1 was marked for identification.)

BY MR. PRUDEN:

Q. Do you happen to have a CV?

A. I do. It's part of the package that you've just been given.

Q. Oh, okay. Great. This will simplify things.

Dr. Sultan, just to make sure that I've got it straight, is this a copy of your curriculum vitae?

A. It is.

MR. PRUDEN: I would like to make that Exhibit 2 to this deposition, and, with your permission, after you mark it, I'd like to just keep it over here by me for reference.

MR. KISSINGER: No objection.

(Exhibit No. 2 was marked for identification.)

MR. PRUDEN: Off the record for a moment.

(Off-the-record discussion.)

BY MR. PRUDEN:

Q. Now I assume it will tell me somewhere on your CV where you are licensed?

A. I'm licensed in North Carolina.

Q. And only North Carolina, correct?

A. That's correct.

Q. I notice the date on your CV is 19 October 1996.

A. Yes, it is.

Q. Is it correct in all aspects, or are there any additions or deletions that need to be made to it?

A. There are no deletions I don't believe. There are some additions.

Q. Okay.

A. Let me just be sure there are no deletions. No, I think everything stands as is.

In addition, in the last several years there are some presentations. That would be the nature of the additions. I gave a workshop track at the National Conference for Women and Addictions that was held in North Carolina, a national symposium addressing women's and addictions issues and the legal factors that ought to be considered. I did that track. I gave a lecture to the North Carolina Counselors' Association meeting about a year ago.

Q. And the nature of that?

A. That had to do with the appropriate assessment of trauma survivors, I believe, from a counseling perspective, or how a counselor might best interview people in a way that was ethical and effective. And I think those are the two additions.

Q. Okay. Thank you.

A. Sure.

Q. Now in preparation for -- let me strike that. When were you first contacted to possibly work on Mr. Thompson's federal habeas case?

A. I think it was near the end of July of 1998. Perhaps August.

Q. So either July or August of last year?

A. Either the end of July or the beginning of August of 1998.

Q. And who first contacted you?

A. Mr. Chavis did on behalf of Mr. Kissinger for the Federal Defender Services office.

Q. And what was the nature of that first contact? Was it simply to determine your availability to possibly assist in the case?

A. Mr. Chavis asked me about my availability and asked if I would be willing to perform a psychological evaluation to assess what Mr. Thompson's psychological condition might have been like at the time of the offense in 1985, to assess whether it was possible to make such an appraisal, to see whether there were factors in his personal background that might have been investigated at the time of trial that would have had bearing on his psychological status at the time of the offense, and Mr. Chavis also suggested that they wanted to know something about Mr. Thompson's current psychological state, his level of functioning at the present time.

Q. Were you also asked if you would be able to determine his competency at the time of his criminal trial in 1985?

A. That was not an initial question, no.

Q. Was it a subsequent question?

A. It became a question because Mr. Thompson's psychological state deteriorated very, very quickly at a point a few months after my initial meeting with him. At that point, there was a question about whether he would be able to proceed with the psychological evaluation, and I was asked to come and observe him and make some kind of determination about whether he was competent to proceed.

Q. In these habeas proceedings, correct?

A. That's correct.

Q. Did Mr. Chavis express to you any opinion as to what he thought Mr. Thompson's psychological condition was, his mental status was, at the time of the offense?

A. The only opinion that he expressed to me was that he thought that he was not in good shape, that he had deteriorated. He didn't label it in any particular way. Said he didn't think that he was doing as well.

Q. When you say he didn't label it, does that mean he didn't use any diagnostic categories, say out of the DSM-IV?

A. Exactly.

Q. Now after your initial contact with Mr. Chavis, did you accept being retained by them on this case, or did you have subsequent discussions in that regard?

A. I think the next conversation was simply a logistical conversation planning my first trip.

Q. And after the initial series of factors or items that Mr. Chavis detailed for you that they wanted you to assess, was that amended any?

A. I need to ask you to tell me what you mean.

Q. Sure. You said that you were asked to determine Mr. Thompson's mental status at or about the time of the offense, if it was possible to make that appraisal, and then his current competency. Have you been asked subsequent to that to render any other expert opinions in this matter?

A. Only what I said to you just a minute ago in terms of his competence to proceed with the appellate process. I don't think I've yet been asked to assess his competence at the time of the offense. I don't think that's ever been a question.

Q. Do you know how you came to be recommended to the federal public defender in Knoxville to participate in this case?

A. I don't.

Q. Have you ever worked for Mr. Kissinger before?

A. I don't think so. I don't know all of the attorney pairings in the state of Florida for the capital collateral representative. I know that Mr. Kissinger, although I didn't know him then, worked there at some point, and it's possible that he was attached to one of

the cases that I worked on.

Q. How about Ms. Dana Hansen? Have you ever been employed by her?

A. I don't think so.

Q. You said that you have a clinical practice, correct?

A. That's correct.

Q. And you also do forensic work, obviously, since you're here today?

A. Yes.

Q. How much of your practice percentage-wise is forensic work? Can you give me an estimate?

A. At this point in my practice, maybe 20 or 25 percent.

Q. And the balance, 75 to 80 percent, being clinical, is that correct?

A. Yes.

Q. Of your forensic work, can you give me a breakdown, percentage-wise, civil cases versus criminal cases? And when I say "civil," I mean, you know, family law matters, personal injury matters, things of that nature.

A. I think that, along that dichotomy, probably half and half criminal versus civil cases as you've described them. I think that's probably about right.

Q. Now out of the criminal cases, what percentage of the time have you testified for the defense versus the State?

A. A lot of the time when I do an evaluation, either for the State or for the defense, I don't wind up testifying, so it's a little hard to describe it quite that way.

Q. Explain to me basically how that works out for you.

A. Okay. I may be called upon either to supervise an evaluation that goes on in my office by another psychologist on our forensic team. I may be called upon to do an evaluation in a criminal situation. Sometimes what I discover in the evaluation is helpful to the attorney who's asked me to do the evaluation. Often I only know that by whether I'm called to testify later in the case, assuming that there is a trial and there is testimony. Some percentage of cases will come to a settlement arrangement or a plea arrangement. Some percentage of cases, because I'm in a supervisory capacity, I won't wind up testifying at all.

Q. Approximately how many capital cases have you been consulted on in the course of your practice?

A. In the course of my practice. Maybe 75, maybe 80.

Q. And capital cases out of which states?

A. North Carolina, Utah, South Carolina, Florida, Virginia. And I guess this counts as a capital case, even though it's a post-conviction case, right?

Q. That's correct.

A. So Tennessee.

Q. I meant to include collateral cases, either post-conviction or federal habeas among those capital, so does that bring in any other states besides the five that you listed?

A. I don't think so. I think that's all.

Q. Out of the 75 to 80 capital cases where you have been consulted, how many of those, roughly, have you given testimony in court?

A. In total I'm going to say maybe 25 or 30.

Q. And would the testimony that you gave in capital cases be in those five states that you've listed for me, North Carolina, Florida, Utah, South Carolina, and Virginia?

A. I don't think that I've testified in Utah. And I was called to testify in Virginia and then declined to testify, so that I may or may not have a record of appearing as a witness in that state. I'm not sure.

Q. In all the capital cases where you've been consulted, has it been for the State or for the defense?

A. They've all been for the defense.

Q. All for the defense. And so none of them would be like a court-appointed expert? You were perhaps paid through court funds but working for the defense in all those cases? I mean, you weren't like an amicus to the court in any of these?

A. No. In fact, North Carolina doesn't often operate on that kind of system, but most of the payment has come through court funds as you described just a minute ago.

Q. Because most of the defendants were indigent?

A. Yes. That's correct.

Q. Obviously, in the states where you've testified you have been declared an expert, correct?

A. Yes.

Q. What federal jurisdictions have you been declared an expert in?

A. I don't know if I know.

Q. As best you can recall.

A. I think the only federal case that I testified in that fits into the category we're talking about is a North Carolina case, a Charlotte case.

Q. Would that be in the Western District of North Carolina?

A. Sounds right to me.

Q. All right. Now a Dr. Barry Crown has also been retained to work on behalf of Mr. Thompson in this case. Are you familiar with Dr. Crown?

A. I am.

Q. How is it you know of Dr. Crown?

A. I've never met Dr. Crown. I hear that he and I have appeared in the same hallway, although we're excluded from speaking to one another or even knowing one another. I'm not sure what he looks like. But I think there have been several cases, some that I know about and some that I don't, on which he's also been called in to prepare an opinion of some kind.

Q. So you've never directly consulted with Dr. Crown on a capital case?

A. That's not true. We have had probably a total of four, maybe five, telephone conversations where we've talked briefly about some of those cases. I just don't know what other cases there are.

Q. Have you had conversations with Dr. Crown about this case?

A. Yes, I have.

Q. And the nature of those conversations?

A. Because I was doing only a part of the psychological testing, having been told by Mr. Chavis that the neuropsychological and intellectual assessment

would be done by Dr. Crown, I needed to check with Dr. Crown about his test results so that I could include them as part of my opinion, part of my work. In that kind of situation, I have the permission of the attorney to make that kind of consultative phone call, and so we did talk about Mr. Thompson.

Q. Did you provide information to Dr. Crown about your testing and evaluation of Mr. Thompson as well?

A. I did not.

Q. Anything about any diagnoses you may have reached?

A. No. I don't think I provided him with any diagnostic information at all.

Q. Do you know Dr. Theodore Blau?

A. No, I don't.

Q. Do you know of him?

A. Yes.

Q. Obviously, you are a psychologist, you're not a medical doctor, correct?

A. That's correct.

Q. Do you have a law degree, a juris doctor or something else like that?

A. No, I don't.

Q. You're not authorized to prescribe medications, correct?

A. No. In North Carolina, psychologists don't prescribe medications. In some states they do.

Q. As part of your training, have you had any training regarding psychotropic medications and their effects?

A. Yes.

Q. What sort of training is that?

A. I have had both graduate school training about the effects of medications and the various types of medications and postgraduate seminar education about that matter.

Q. Various workshops that you've attended, for example?

A. Yes.

Q. You're not a neurologist, correct?

A. No, I'm not.

Q. What sort of neurological training have you had?

A. Almost none. That's why always in an assessment where a neuropsychological question comes in I will request the assistance of a neuropsychologist.

Q. In performing the evaluations that have been requested of you on Mr. Thompson's behalf, you've reviewed various documents?

A. Yes.

Q. You have provided me with a three-page, approximately three-page document, two and a half pages, of -- says documents reviewed as of 7/22/99?

A. That's correct.

Q. As you sit here today, to the best of your knowledge, this is a complete listing of all the documents that you have reviewed?

A. To the best of my knowledge, every single document that I have reviewed is listed on these three pages.

MR. PRUDEN: If I could, I'd like to make that the next exhibit to the deposition.

MR. KISSINGER: No objection.

(Exhibit No. 3 was marked for identification.)

BY MR. PRUDEN:

Q. Are there any other materials, outside of documents, that you've reviewed as part of your process of evaluating Mr. Thompson, for example, audio tapes, videotapes?

A. No. There are no tapes of any kind relating to this case that I have reviewed. The other material would be my own assessment notes from my clinical interviews with Mr. Thompson, notes that I made during my interviews with collateral witnesses, the psychological testing data that I collected.

Q. Any other materials --
A. I think that's it.
Q. -- that have not been listed as documents? Okay. The clinical notes and notes from your interviews with collateral witnesses and the psychological test data, those are items on the subpoena. Have you already forwarded those materials to Dr. Blau?
MR. KISSINGER: I don't think they have been forwarded as of this very moment, but they will be sent off immediately following the deposition.
MR. PRUDEN: And you'll provide us with an inventory of what's being sent?
MR. KISSINGER: Absolutely.
MR. PRUDEN: Do you have Dr. Blau's address?
MR. KISSINGER: I have it.
(Off-the-record discussion.)
BY MR. PRUDEN:
Q. How many times have you actually seen Mr. Thompson?
A. I've seen him three times.
Q. Can you please tell me when those three times were?
A. I can. The first time I met with him was on August 20th of 1998, and I spent about four hours with him at that time. I then saw him on the 2nd of February,

1999, and spent about two and a half or three hours with him, perhaps almost four hours with him. And again on the 7th of April of 1999 for about an hour, hour and a half.
Q. Let's take these in order. What exactly was the purpose of your visit with Mr. Thompson on the 20th of August, 1998?
A. The purpose of my initial visit was to address the four questions that I mentioned at first, to assess Mr. Thompson's current psychological status, to assess Mr. Thompson's likely psychological status and mental state before and surrounding the time of the 1985 offense, and to assess social, environmental, psychological, and economic factors in his life that might have been considered to be mitigating in nature at the time of his trial in 1985.
Q. And how did you go about this on the 20th of August, 1998?
A. Prior to that date, I had received some records from the Federal Defender's office, and I reviewed those records to establish that Mr. Thompson had a reading level that was adequate to allow the administration of certain psychological tests. My procedure is, prior to the initial interview, to do very limited record review so that I go into the first interview with an objective

mind. So basically what I knew about him at that point was the crime which he had been convicted of, the date of the offense, and what his educational background and reading level were. I also knew that psychological testing had been administered to him in a variety of settings prior to my going in. At that point, I went in with just the Minnesota Multiphasic Personality Inventory for that first date.

Q. Is that the MMPI-2?

A. Exactly. And I spent two and a half of the four hours with him conducting the clinical interview, and about 90 minutes of that time was spent for Mr. Thompson to self-administer the MMPI following my instructions and direction.

Q. That's in addition to the two-and-a-half-hour interview?

A. That's correct.

Q. And that time again was?

A. About four hours.

Q. I'm sorry. No. For the MMPI.

A. About 90 minutes, about an hour and a half.

Q. What did you assess Mr. Thompson's reading level at prior to going in?

A. I didn't assess his reading level. It had been assessed as above eighth grade, which is the required

reading level for the proper administration of the MMPI-2.

Q. And the notes of the clinical interview on that date are among the materials you'll be forwarding to Dr. Blau, correct?

A. Yes. That's correct.

Q. As well as the raw data of the MMPI?

A. Yes.

Q. Will that raw data indicate what scoring programs you've used on the MMPI?

A. Yes.

Q. Were you able to validly administer an MMPI to Mr. Thompson --

A. Yes, I was.

Q. -- at that time?

A. At that time.

Q. And there were no other standard tests used by people in your profession that you administered on that date?

A. No. Most of the testing had already been completed by Dr. Crown by the time I saw Mr. Thompson for the first time, although I was not aware of any of the results of that testing.

Q. Did you discuss with Mr. Thompson the facts and circumstances of the crime for which he stands convicted

and sentenced to death during your interview of him?

A. Yes.

Q. How did you discuss them with him? Did you ask him questions or detailed questions, Dr. Sultan, or did you just ask him an open-ended question?

A. I would have had to ask him some open-ended questions, because I didn't know the details, so -- I hadn't read any factual basis of the crime. That meeting was my first look at Mr. Thompson and my wanting to see how he presented himself without a lot of particular provocation from me, so that, because I was to have a lengthy time to interview him -- although it turned out not to be the case, at the time I thought I was going to -- that interview, I think, would be described as quite open-ended, basically me asking him to tell me about himself, about what aspects of his growing-up years he wanted to talk about.

I asked follow-up questions when he would bring a topic up. He answered a general question about the offense, and then I would ask some follow-up questions about that as well.

Q. Do you have your notes of that interview here with you to refer to?

A. I don't. They're packaged up for Dr. Blau.

Q. Did you write down every fact that Mr. Thompson

told you about his recollection of the murder of Ms. Lane on your notes?

A. I don't recall specifically, but my best guess would be that, while there's some factual material about the offense itself, my notes are much more likely to reflect his psychological state at the time and what he recalled about how he felt and what he was experiencing and what the other people around him seemed to be experiencing through his observation. So I'm sure there's factual information, but I hesitate to tell you that every single detail that he suggested to me wound up in those notes.

Q. What did Mr. Thompson tell you about the offense, as best you can recall?

A. As best I recall, Mr. Thompson talked about his relationship with the young girl that he was with for the days and weeks prior to this.

Q. Joanne McNamara?

A. Yes. And how he felt a tremendous need to protect her. He fancied himself rather as a rescuer of young women, and this part of the story came about in his description of other circumstances in which he had provided assistance to damsels in distress. Joanne McNamara was the last in a line of young girls that Mr. Thompson viewed himself as taking under his wing. He

was quite disturbed about her circumstances.

What he told me was that they were thrown out of the place that they had been staying when it was discovered that they were not in fact married. I don't know who it was who portrayed them as a married couple to the people that they were staying with, but that the truth of it was discovered, that someone contacted Joanne McNamara's mother -- or parents, I don't know which; I think mother -- to let her know that this child was in her home, the person they were staying with, that Mr. Thompson forced the victim in this case into her car at knifepoint.

Mr. Thompson was not sure whether he precisely recalled that he killed Ms. Lane -- is that correct?

Q. That's correct.

A. Okay. But that he knew that he had in fact killed her.

Q. I'm sorry. Would you say that again for me?

A. I'll do my very best. He was not sure -- and I asked him this specifically -- whether he was recalling the events from his own memory or from having heard the recitation of the facts and a reminder of his own statement to the police over the years. At this point in time, we're about 14 1/2 years after the event.

He wasn't claiming in any way not to remember,

simply was unable to make distinctions for me about which memories were specifically his and which he had read and heard about in the course of his case and had heard discussed about him. And, of course, there had been post-conviction hearings and, by then, Supreme Court decisions, and so the facts had been recited many, many times. I was not clear precisely how clear his recollection was at the end of that first interview. That was one of my issues to revisit at a later time.

Q. Does he have any recollection of actually stabbing Ms. Lane?

A. He said he wasn't sure. That was really the issue that we talked about. He said that he knew he had talked about it at some point, and he had been told he talked about it at some point, but that his emotional state at the time was pretty disrupted and aroused. At some point during that conversation Mr. Thompson began to show a lot of agitation and anxiety, kept expressing a willingness to talk, but it was clear that in remembering there was a lot of pain for him, and he expressed a great deal of remorse to me about the occurrence of the offense. Said that he had no real understanding even after all this time about how he could have been capable of such a thing. It was not characteristic of him, according to him, for him to be assaultive in that way.

Said that he had never killed anyone before and that he didn't have any reason to hurt Ms. Lane. Said that it haunted him.

Q. Now were there any visible signs you observed of this anxiety and disturbance?

A. Easier to demonstrate than to talk about verbally, so I'll do that and see if I can describe what I'm doing.

Q. Okay, and if you'll do it and maybe --

A. Narrate it at the same time.

Q. Okay.

A. Okay. When Mr. Thompson becomes agitated, he rocks back and forth in his chair, does what I've heard referred to as pill-rolling, finger rolling with both hands, rubbed his face a lot with his hands, used the same phrases over and over again, and then became what a psychologist or psychiatrist might refer to as tangential, would begin to talk about different subjects and then bring himself back to the subjects at hand, or I might direct him back to the subject at hand.

At some point he began to talk to me -- and I don't know that it was connected specifically to talk about the offense, so I want to be careful to say that to you -- but at some point during the interview he began to tell me that he had written all of the songs on the radio

that I ever listened to, and he began to tell not just me that, but any guard that wandered by in the hallway, tell himself that, told me that again and again. I disagreed with him at first to see what would happen, and he was quite secure in that belief and wasn't agitated by the fact that I challenged him. He just thought I was silly. And I think that probably would be my interpretation of agitation. Because it was the first time I saw him, I don't know if the belief system that I was hearing about that seemed so odd was connected to agitation or simply a part of what he was like, and so I made some note about that but didn't attach any particular significance to it at that time.

Q. What was his reaction when you expressed disbelief about his writing the songs?

A. He told me I was silly and patted my hand.

Q. If I understood your comments correctly, he would start out basically on point as he was talking to you about various aspects of the crime or the issues that you were talking about, and then he would become tangential, correct? Or did he start out tangential at some points and then focus back in on what he was talking about?

A. Focusing I think is an overstatement in my event. I don't think that he ever was really focused.

Q. Why?

A. Having only seen him that one time in a relatively coherent state, I don't know what he's like when his medication is properly regulated and he's at h_ best, but Mr. Thompson in general rambled. His general style of verbiage was what we would call a little loose in association. Something would remind him of something else, and he would begin talking about that before he finished talking about what he started out talking about. Was tangential in the sense that whatever associations he made in his mind that most of us would keep to our selves -- we all do them, we just don't all say them -- he would then say whatever it was that occurred to him. I didn't do any particular kind of redirecting to see how focused he could become. I simply redirected as I needed to to get a general sense of the way his thought process was working.

Q. Would you describe Mr. Thompson as being self-reflective during your initial interview with him?

A. No.

Q. The reason I asked that was you did state that he was talking about how he felt about the crime.

A. The word "reflective" means to me a more intellectual process.

Q. All right.

A. He emoted a great deal. He reflected very little. Insight, which is an intellectual kind of exercise really, almost an academic, removed exercise, is not something Mr. Thompson has very much of I don't think. He reacts very strongly emotionally, and sometimes out of control emotionally, but I don't think I'd categorize that as reflective. He was deeply hurt and deeply upset by his own behavior, became tearful, rocked a great deal back and forth in his chair, did the hand gestures that I talked about, but did he reflect upon it and describe it to me objectively? I don't think so.

Q. Was it Mr. Thompson's becoming tearful that led you to conclude that there was remorse and that alone?

A. No. I think the content of his verbalizations was pretty clear as well. I don't know what's wrong with me; how could I have done that; how could I be a beast; why was I a beast; what was I thinking; how could this happen; should never have happened; I think about her all the time; she deserved to have a life. With or without the emotion attached, the content I think is pretty clear.

Q. Was this in response to any specific question by you as to why he did this crime, or was this just part of his general rambling to you or discussion?

A. I don't think I would have asked Mr. Thompson why he committed the offense during my first meeting with him. I think he pretty much just chose the way he wanted to talk about it.

Q. You said that he described Joanne McNamara as the last in a long line of young women or damsels in distress that he was rescuing?

A. Actually, I think I described it that way.

Q. All right.

A. I don't think that's a label he would have used. Again, that indicates a whole lot of self-reflection. He simply told me about other girls that he had helped.

Q. Were you able to verify that there were other young women he was able to help besides Ms. McNamara?

A. I don't know if I'm able to do that. I haven't done that.

Q. Have you asked Mr. Kissinger or Mr. Chavis to try and verify that for you?

A. No, but it's a very interesting idea.

Q. Did you ask him how he felt he was helping these young women?

A. Yes, I did.

Q. What was his response?

A. He protected them.

Q. From?

A. Enemies.

Q. Was he more specific?

A. Different situations, different enemies. Joanne McNamara's case, her mother was the enemy. Evil men in her mother's home were the enemy. Her mother wanting her to prostitute. In a situation that he was describing to me in Hawaii -- no, maybe it was a situation that took place before he was transferred to Hawaii. In the service, he rescued two teenage runaway girls, put them up in his barracks. They came from, according to him, abusive, violent homes, the enemy being their family -- their families.

Q. Did he ever tell you that instead of rescuing young women that he assisted young men?

A. Never. I don't think so, no.

Q. Did you talk with him at all about his girlfriend Arlene during this first visit?

A. A little bit, yes.

Q. Did you bring up the topic or did he?

A. I don't remember.

Q. What do you recall was said about her and his relationship with her?

A. That he loved her very much, that he knew her for a long period of time, that they lived together when

he was in Hawaii, that he wasn't good enough for her.

Q. Did he say why he was not good enough for her?

A. I don't recall that he did specifically, no.

Q. And you didn't ask him?

A. I don't think so.

Q. You administered the MMPI-2 to Mr. Thompson. He willingly took the test?

A. He did.

Q. As you observed him, did he have any difficulty reading the test and taking it on his own?

A. He didn't have any difficulty reading it. He required a fair amount of supervision to take it.

Q. Can you elaborate on that for me, please, the supervision that was required?

A. I'll describe the level of supervision as unusual statistically, in terms of the number of MMPIs that I've helped to administer over the yeare. Mr. Thompson read some of the items aloud to me and then made rhyming sounds to some of the words. Some of the items struck him as particularly amusing, and he would laugh out loud, and I would laugh with him and suggest to him that he get back to what he was doing. It didn't wind up taking him -- part of how I suspected he might be of normal intelligence is that it didn't take him much longer than the average person who does it without the

distractions. He asked a few questions about the interpretations but took my direction when I suggested to him that he was the one who needed to make the interpretation.

Q. So by and large Mr. Thompson had no apparent difficulty comprehending the questions or interpreting them?

A. I don't believe so, and the scoring of the test doesn't reflect any difficulty with comprehension.

Q. So you never reached a point where you had to read questions to him because he was unable to read them and understand them?

A. No.

Q. Is there anything else that occurred during this first visit, this four-hour visit with Mr. Thompson, that we haven't discussed?

A. I think we have hit the high points.

Q. Did you talk with anyone else at the prison concerning Mr. Thompson during that first visit when you were out there at River Bend, or was your time at River Bend solely limited to dealing with Mr. Thompson?

A. During that first time, my time was limited solely to him.

Q. On the 2nd of February this year, you said that you spent between two and a half and three hours out at

the prison?

A. I did.

Q. And what happened during your visit? What did you do during your visit to the prison on 2 February, '99?

A. I think the answer to the question of what I did is that I observed Mr. Thompson. I observed Mr. Thompson in interaction with me, and I observed Mr. Thompson in interaction with prison officials, and I observed Mr. Thompson in interaction primarily with Mr. Chavis.

Q. Where did you make these observations?

A. We were in one room the entire time. Mr. Chavis entered that room with me. It's a small room, kind of a cell-sized room. In fact, I think it is a cell.

Q. A visitor's room?

A. It's used as a visitor's room, but I don't -- I don't think that it has the amenities of a typical visitor's room. There is a table in there, but I think it really is a cell that's set aside in the high-security area of that prison in which he could be observed from three sides, so part of what I got to observe was Mr. Thompson's reaction to the people who were observing him. It was a lot like being in a fish bowl.

Q. And the reason you went out there on the 2nd of February was why?

A. It was about time for me to go back and continue my evaluation, but prior to me planning that trip specifically, using Mr. Chavis as my contact person for the logistics, Mr. Chavis asked me if I might come and observe him. He called me at some point a week or so before the time of my visit and said what I said to you earlier, which is that he was concerned about him and thought that he wasn't doing very well and asked if I would come and look at him.

Q. What did you observe about Mr. Thompson on this visit?

A. Mr. Thompson was in terrible psychological condition. I'll describe his physical appearance first. Mr. Thompson was physically filthy. His body stank, stank to the point where I could smell him before I could see him enter the room. He looked disheveled. He came into the room wearing a dirty rag wrapped around his head. He was highly agitated, quite angry during much of the visit, sometimes threateningly so.

Q. Toward you?

A. Not toward anyone in particular. He alternated between being absolutely silent and speaking in great gushes of words, streams of words. Mr. Thompson appeared

to be in a great deal of psychological discomfort. He was not having the sort of psychotic episode where someone is comfortable being crazy. He was apparently quite tortured.

Mr. Thompson spoke in what could be described clinically as word salad at times, where words were strung together that had nothing to do with one another. His answers to questions didn't appear, on the surface at least, to have anything to do with the questions. Mr. Thompson didn't know who I was. Did not know that he was living in a prison unit, thought that he was living on a slave ship.

And there are psychologists and psychiatrists who believe in the symbolic level of speech of that nature, so I hesitate to say to you that he was not able to communicate anything. Perhaps it is that I was not able to understand much of what he was trying to tell me.

But he told stories that had to do with his enslavement and with his suffocation and with the fact that he was being destroyed by an unknown tormenter, although he knew it, he just couldn't tell me who it was or what it was.

That alternated with talk about how he was the god of the world and the king of the world and that he had seen heaven and that he had the power to set himself

free and to get us all out of the slave ship that we were living in or that we were on.

At some points he was able to say who I was in terms of knowing that I was a psychologist. At other points he told me that I was one of his vessels, one of his servants. At some point he became quite angry. Sometimes he would get very, very angry, and I was unable to detect anything external that had caused whatever the verbal eruption was.

He was kept in hand shackles as well as leg shackles during that visit and sometimes appeared very uncomfortable in them and other times seemed to be unaware that he was in them. He tried to leave the interview room -- stated some intention to leave the interview room maybe a dozen times and was distracted by myself or Mr. Chavis into continuing conversation.

After about an hour and a half, he allowed Mr. Chavis to leave the room. At first he was afraid of me. He told me that I was evil and that I was there to kill him. At some point it was all right for Mr. Chavis to leave, and, in fact, it became very important for Mr. Chavis to leave. So he dismissed Mr. Chavis, and Mr. Chavis left.

Q. You say it became important. Important to him, or did he say it was important or did you judge it to be

important?

A. He said. He directed it in some way. I'm not sure exactly what he said. Mr. Chavis asked permission to leave at some point and was told no. At that point it was okay for him to leave. Mr. Thompson seemed to be reacting very, very, very strongly to even casual observation on the part of the guards. Because of his high level of agitation, and later as I became aware, because the guards were very concerned about him and the state he was in, there were more than the usual number of people around I think, and Mr. Thompson was aware that he was being observed more closely and yelled things at the guards and pounded his hands sometimes on the table and got up from his chair and moved his body around.

At some point he was willing to remove the rag he was wearing on his head, but I think that took almost two hours. And our interview terminated when Mr. Thompson decided that I could save him if I would allow him to kiss my hand, and when I refused, he became very angry, stood up, turned his back on me, and told me to leave. Didn't use the word "leave" but said you're not here anymore.

When the guards, four guards, came in to assist Mr. Thompson in returning to his cell, whether intentionally or not, they wound up placing me between

them and Mr. Thompson. Mr. Thompson was extremely angry with the guards. I don't know why. They didn't know why. They were trying to talk with him about it. Didn't want to go back into his cell block the way they wanted him to, said that that was the incorrect door. Kept insisting that he come out the door that the guards were standing in front of, the door that I was supposed to leave by.

I actually requested that the guards move me from between them, because I was concerned that there was going to be some sort of physical altercation at that point. They were as well. I was -- Mr. Thompson's a lot taller than I am. With the thrashing around that he was doing -- they weren't physically struggling at this point; he was thrashing around himself -- I was afraid that he was going to actually hit me with his head. He was rocking his head back and forth.

Q. Gesticulating too?

A. To the extent that he could --

Q. That he could with the shackles?

A. -- with his hands shackled. In fact, I think they were on a waist band too, because I remember noticing his head moving much more than his hands. If he'd been waiving his hands in my face, I would have noticed.

The guard then spent about ten minutes, maybe a little bit less, with me, then, in the hallway and Mr. Thompson in that same room I was telling you about with all four guards around him with them talking very quietly and patiently to him. There was one man in particular that he seemed to be comforted by, and this man spoke very quietly to him in his ear about that it would be okay and he could go back to his cell now and he wouldn't let anything bad happen to him and although Mr. Thompson continued to curse, the volume of his emotionality came down, and that guard led the procession of people out the back door of that room back towards the cell block.

At that point, after they had him back in his cell, they actually brought him back to me. Mr. Thompson -- I thought this was really quite dignified behavior on the part of the custody officers. Mr. Thompson was apparently in a room in which he was not allowed to have paper or pencils or any object at all, but he had been telling me for those two and a half or three hours by that point that he had some documents that he needed me to take to his lawyer for him. Sometimes they were a secret code or a map to a gold mine. Sometimes those documents came up as his salvation. But the guards actually led him back to his cell to let him

look for those documents, and then they led him back into the room so that he could tell me from the doorway that they had been stolen.

Q. So he never delivered any of these documents to you?

A. There weren't any such documents.

Q. Okay.

A. And the guards assured me that there had not been any documents stolen, that in fact he was not able to have anything with him and hadn't for some time so that there wasn't anything missing from his cell.

Q. Were you able to carry on any sort of a conversation with Mr. Thompson during this visit?

A. I think that depends a lot on what you think a conversation is. We were not conversing as you and I are. Words were being exchanged back and forth, and at some point he thought that we were making contact, because he appeared to be pleased when he was talking to me or when he was talking to Mr. Chavis. He didn't say anything that made any sense to me particularly.

Q. And after they took Mr. Thompson away, you didn't see him again on that date?

A. No, I didn't.

Q. Did you, subsequent to Mr. Thompson being taken away, talk with any of the guards?

A. I did. Two in particular.

Q. Okay.

A. I don't know their names.

Q. What was the nature of those conversations? Before you answer that, Doctor, did you make any notes about those conversations with the guards?

A. I did, as soon as I left the prison as a matter of fact. And I in fact had to make notes about that interview after I left Mr. Thompson's presence, because part of what he did -- and I neglected to tell you this earlier -- is that he studied very carefully every single pen mark that I made on my paper, took the pad out of my hand, made his own notations on the pad, read words out loud, made up different words, told me to write down various words and spelled them for me.

Q. Are those notations that he made on your pad part of the documents that are being forwarded to Dr. Blau?

A. They are.

Q. What did you discuss with the correctional officers?

A. I was very alarmed by the condition that I saw Mr. Thompson in. When I had seen Mr. Thompson about five and a half months before that -- no, I guess maybe not quite that long, about five months before that -- he was

in a much, much better psychological state.

The level of anguish and disorientation and confusion and anxiety that he was living in was very alarming to me, and I asked the correctional officers who came back to talk to me how long he had looked like that. I asked them what they thought about what was happening to him. They indicated to me that they didn't understand why he had been allowed to get into that kind of psychological position. They thought of him as a mental health inmate. They thought he had longstanding psychological problems, according to their report. They talked to me about the fact that there was a unit either at that prison or somewhere nearby for severely mentally ill inmates, and they both expressed the belief that Mr. Thompson needed to be housed there.

One, at least, of them had known him for many years and said he had never been as bad -- in his words, as bad as he had been in the last several weeks, and they indicated to me that some custody officers had been relaying information about his psychiatric condition to the contract people who were mental health service providers for the prison unit and that it didn't seem that much was being done.

Q. Are the names of those correctional officers with whom you spoke in your notes?

A. They're not. I was upset enough and physically a bit intimidated by the interaction I just had with Mr. Thompson that I didn't look at their name tags. When I left, I immediately called Mr. Chavis and described what I could remember about their physical appearance and asked him to identify them.

Q. Was Mr. Chavis able to identify them?

A. I don't know.

Q. He's never gotten back to you on that point?

A. No, he has not.

Q. Did you make any attempt to talk to the prison mental health personnel after this episode with Mr. Thompson on the 2nd of February, on that particular date, before leaving the prison?

A. What I did was talk to Mr. Kissinger seeking permission of some kind from him about how to pursue communication of the kind you're describing. He suggested to me that he didn't think it was appropriate at that point for me to directly contact the prison personnel unless I thought Mr. Thompson's life was in danger -- in which case I wouldn't have asked his permission, I just would have told him that's what I needed to do -- and he said that he would communicate it in whatever way he saw appropriate.

Q. Had you planned to do any testing of

Mr. Thompson when you went out there on the 2nd of February?

A. No.

Q. I guess that brings us to April 7th.

A. Yes.

Q. What happened, then, on that date?

A. I was scheduled to appear at a hearing that I don't really understand the nature of exactly, so I can't tell you what it really is legally, but there was some kind of hearing in which the issue of his competence to proceed in his appeals was going to be discussed.

Q. That's okay. Mr. Kissinger and I know what the hearing was supposed to be, so you just tell me what it was that happened out there, and I think we'll be fine.

A. Okay. I showed up at whatever city it was in the night before the hearing, and I had asked to speak with Mr. Thompson, because present competence is such a fluid condition. Mr. Kissinger and I both met with Mr. Thompson together -- he and I sat side-by-side with Mr. Thompson across the table -- and I talked to Mr. Thompson, and I thought that probably within the legal definition of competence to proceed as Mr. Kissinger explained it to me, at the time that I met with him, he probably met that definition. He probably met that standard for competence.

Q. What sort of things did you talk about with Mr. Thompson?

A. To describe it as talking about with is probably not an accurate characterization. Mr. Thompson was very angry with me. He did not want to talk with me.

Q. Was that how he expressed his anger, simply I don't want to talk with you, or were there other signs of anger directed toward you?

A. Very, very, very rapid clipped speech about how he didn't know why we had to meet, didn't want to meet, the sort of tone of voice I'm using right now. Very clipped, very rapid. He had met a good doctor; he had already talked to a good doctor; why was I there; could I leave him alone; he didn't want to talk about it again; he didn't want to tell me whether he knew where he was; he knew lawyers were representing him; he knew lawyers were trying to kill him; he knew he was in a jail; couldn't I see the bars; was I blind; you know, obviously there were bars.

Some of what he said wasn't coherent, but when I asked him pointed questions about his legal circumstances and about the function of the court, he answered those questions, not directly exactly, but let me know that he understood. He didn't seem to understand that the doctor that he liked so much had been sent there

by the State.

Q. Dr. Blau you mean?

A. Yes.

A. According to Mr. Thompson, the man who came to see him was going to save him and quite a wonderful fellow and looking out for his best interests and couldn't I just go away. Said they made contact. They had very good harmony. They had a good -- I think connection is the word that he used. That it had been a significant meeting and that I ought to consult with the doctor if I wanted to learn something. He was quite a learned man and a good man, unlike the person I was.

At some point he knew who Mr. Chavis was, said some angry things about him. At some point he wasn't sure who Mr. Chavis was. But he knew that Mr. Kissinger was his lawyer each time I asked him. And so he tolerated my presence for about 45 minutes, maybe an hour.

Q. Was he angry toward Mr. Kissinger?

A. I -- my interpretation is that he was angry with Mr. Kissinger for bringing me into the room. He thought Mr. Kissinger was doing kind of a crappy job and told him that he wished he would just get some money so he could get a decent lawyer, but he said that Mr. Kissinger hadn't been horrible exactly so far, right

at that point, and although he would become free when Mr. Kissinger raised funds for his release, he knew that he was stuck with Mr. Kissinger for at least the next few days, which said to me he knew who Mr. Kissinger was. When I asked him if Mr. Kissinger was actually a fund raiser or whether he was a lawyer, he said he was a lawyer, so -- but he wasn't really happy with anybody in the room.

He told me actually that he -- I asked him when the last time was he had a bath because he looked like he had showered, and, in fact, whoever was the chief custody officer -- I think it might have been a captain -- Mr. Kissinger and I were in his office waiting for Mr. Thompson to be brought to whatever room we were going to be allowed to sit in, and he mentioned to us in passing that Mr. Thompson had eaten his dinner or had eaten something and had bathed.

When I asked Mr. Thompson when he bathed, he told me it had been months. When I asked him if he didn't remember taking a shower, he became very angry with me, so I didn't know whether he was angry because he didn't want to talk about taking a shower or because he didn't remember taking a shower.

Q. On 2 February did you ever ask him about his hygiene or lack thereof?

A. Did I ask him? I must have, because he told me that he didn't like water. I told him he stank, so that doesn't qualify as asking, but I think we had those two exchanges at least.

Q. Were you able to elicit from him why he allowed his personal hygiene to deteriorate at that point in time?

A. Can't, can't, can't. Afraid, afraid, afraid.

Q. Of water, water, water?

A. Yes.

Q. Okay. Did you administer any tests to Mr. Thompson on 7 April '99?

A. No.

Q. Do you intend to administer any other tests to Mr. Thompson between now and the evidentiary hearing in September of this year?

A. I don't think so.

Q. You had to think for a moment about that.

A. Well, it would be very interesting and maybe clinically interesting. That's what I have to decide about, maybe if it would be clinically significant to do some projective psychological testing with him. The judgment that I'll make is whether it's likely to be so stressful for Mr. Thompson that the stress would outweigh whatever possible gains there might be.

I'm also not at all sure that I'm going to be able to complete my evaluation by September, because if Mr. Thompson's condition is not improved beyond what I saw the last time I visited with him, I'm not sure how one might do that.

Q. And that last time would be 7 April, correct?

A. Yes.

Q. What tests, as we sit here today, do you think you would perhaps like to administer to further assist you in completing your evaluation of Mr. Thompson?

A. If I administered any further tests, I think that I would like to administer the thematic and perception test that Dr. Copple administered to him in the early 1990s. I thought the results that he obtained at that time were quite interesting, and it would be interesting to see how that had changed over time.

Q. Any others?

A. None that I can think of. He's been given quite a large number of tests by all the psychologists who've had their hands on him over the last year.

Q. What remains to be done so that you can complete your evaluation of Mr. Thompson?

A. Are you asking me about the ideal world or the world of what minimum could I survive with in order to be secure about my opinions?

Q. Why don't you give me both?

A. Okay. In the ideal world, I would have two or more further opportunities to spend time talking with Mr. Thompson about his life and to be able to review with him information about his family life and his economic circumstances that has been revealed to me through other sources.

Typically I'm in a position where it's the individual him or herself who might be revealing those circumstances to me first, and then I might be seeking collateral information to substantiate. In this case, I don't have any of that information from Mr. Thompson and all of it from other people, so it would be very helpful to know, when confronted with the facts as they have been told to me, whether Mr. Thompson could let me know something about how that affected him emotionally.

That would let me be able to have opinions beyond simply what psychologists and psychiatrists know to be true statistically in certain circumstances. Then I would be able to know that that was true for Mr. Thompson as well.

Q. And minimally? I'm sorry. Are you through telling me what you need for the ideal world?

A. One more thing I think in the ideal world. I think I would like to speak with another relative or two.

Q. Have you spoken to some relatives?

A. I have. This family has been able to help me understand a great deal of the early dynamics of Mr. Thompson's life, and, because he's such a poor historian -- even was during the first visit -- collateral witnesses in this case are quite important because, unlike how Mr. Thompson's been portrayed by Dr. Blau, Mr. Thompson's very reluctant to talk about whatever level of disability or illness or suffering he might have experienced, and although we did talk about some of the same events in his family life that later I talked about with his grandmother and his sister, he certainly minimized the damage to him of those circumstances.

Q. Have you had a social history prepared on Mr. Thompson?

A. Not a formal social history, no.

Q. Do you intend to have one?

A. No, not at this time. I don't.

Q. I take it there has been no prior social history done on him that you've been provided. Am I correct in assuming that?

A. I think I have been provided it as part of the prison records. I mean, I think that there are social histories that are part of various evaluations that have

been done on him in the past. I don't know how formalized they are, but certainly there was some information about his family.

Q. You state that you've talked with his grandmother?

A. Yes.

Q. When was that?

A. Yesterday.

Q. First time?

A. First time.

Q. And his sister?

A. His sister, Nora Wharton.

Q. W-a-r-t-o-n?

A. W-h-a-r-t-o-n.

Q. And when did you talk with her?

A. Yesterday as well.

Q. First time?

A. Yes.

Q. Have you talked with any other family members about Mr. Thompson's background?

A. No.

Q. Have you attempted to talk with his brother?

A. His older brother, Curtis, is the person I was referring to earlier, and I did attempt to call his house at one point last night, and he was not at home.

Q. Have you attempted to talk with any of Mr. Thompson's schoolteachers or school administrators?

A. No. I have, however, reviewed a large number of depositions and pieces of testimony that are those people that you're describing right now.

Q. Neighbors from when he was growing up, have you talked with any of them?

A. No, I have not.

Q. Just reviewed any testimony perhaps from them?

A. Yes. That's correct.

Q. Have you seen the -- says here extract of Mr. Thompson's Navy records taken from trial counsel's file, post-conviction hearing Exhibit 3. That does not include the actual transcript of his court-martial, does it? Have you reviewed the transcript of his court-martial, called the record of trial?

A. I'm trying to think if the actual transcript is in there. I think that in that exhibit is a summary of the transcript, a factual finding. I don't know if I have -- yeah, I think I have seen the testimony of at least some of the witnesses, so it may be that the answer to your question is yes and I don't know.

Q. Or perhaps it's just the summary of the testimony of the witnesses?

A. Perhaps it is, but I don't think so.

Q. The record of trial, I believe, would be this size document (indicating), and it's about 3/4 to an inch thick I believe.

A. I think that is part of the packet that I received.

Q. Have you attempted to contact any of his supervisors in the military?

A. No.

Q. Have you talked with his former girlfriend, Arlene?

A. Cajulao. No, I did not. I actually interviewed Mr. Chavis, who spent -- let me see if it was three or four days -- with her. It looks like from July 29th through August 2nd of last year, 1998, interviewing her in Honolulu, Hawaii. Mr. Chavis and I have talked about the content of his interviews with Ms. Cajulao on several occasions over the last several months.

Q. Did you find her observations of Mr. Thompson beneficial to you?

A. I did.

Q. Basically what about her observations was beneficial? What points did she bring out that you find important in reaching your diagnosis?

A. Ms. Cajulao described to Mr. Chavis that during

the course of the four-year relationship she had with Mr. Thompson, Mr. Thompson became increasingly bizarre in behavior that he exhibited. There were a number of occasions in which there were incidents that took place in the military that he described to her as him having been attacked. The facts of the situation may in fact not be that, but that was his description to her, that he was being picked on, that he was being bullied, that he was being attacked.

He became depressed, according to her, over time and increasingly paranoid. At some point she would come home from work, and he would be in their home with the curtains drawn, standing by himself in the dark telling her that people were after him and that he didn't want people to be able to look at him through the windows. She remembers being quite concerned about his behavior.

There are a couple of situations that she described to Mr. Chavis in which, with no external provocation that she could identify, Mr. Thompson became quite violent with her, and she saw those behaviors as very unusual for him and reported to Mr. Chavis that Mr. Thompson seemed unaware of what had provoked it and didn't even seem after the fact to remember what had taken place, would simply, after a period of time, calm

himself down and return to normal behavior. I found all of that quite significant.

Q. How did he become violent with her?

A. There's one episode described in which they're in the kitchen cooking dinner or cleaning up the dishes, and he actually threatened her with a knife. He told her that he was going to kill her.

Q. Any other specific violent episodes related to you?

A. There's an incident in which I believe he struck her.

Q. With his fist or with an object?

A. With some part of his body. I think he may have grabbed her around the neck.

Q. Do you know whether or not she ever reported any of these assaults on her?

A. I don't know.

Q. How was this information conveyed to you? Was this a written statement that Mr. Chavis had taken from Ms. Cajulao? Is that how you pronounce it?

A. Cajulao is what he tells me.

Q. Cajulao.

A. Yes.

Q. Was this a written statement, or are these Mr. Chavis's notes that you have relied on?

A. They're his notes I've relied on. It's an oral report that he made to me, and I've made some notes of that report.

Q. So he did not actually give you his notes?

A. That's correct.

Q. The notes that you made, are they among the materials that are going to Dr. Blau?

A. Yes.

Q. Have you talked with Mr. Thompson's trial attorneys in this matter?

A. I have not.

Q. Do you intend to?

A. Again, it's a wonderful idea. That might be a really significant source of information. In reality, in the duration of an evaluation, anyone who can provide me with information about Mr. Thompson increases the depth of my understanding of him, and so that would be a very nice thing.

Q. What about his post-conviction attorneys?

A. My opinion about that is exactly the same.

Q. Have you talked to them?

A. No, I have not talked to them.

Q. Have you talked to any other custodial officers out at River Bend other than the two that you mentioned you spoke to on 2 February of this year?

A. Not about Mr. Thompson, no.

Q. You've talked to other custodial officers simply about getting in and out of the prison? Administrative type things?

A. Sometimes I've talked to them about whether they like their jobs, or they wanted to know what work was like in North Carolina, so it might be that kind of conversation.

Q. Since I just received this report at the outset of the deposition, I haven't really had a chance to go through it. Is this a preliminary report, then, since you haven't completed your evaluation?

A. It's somewhere between a preliminary report and an amended report and amendments that will be attached to it. Let me say it better than that. I think that I have enough information about Mr. Thompson so that I am comfortable with the opinions that I suggest, that I make in this document. I think that as additional information is forthcoming it will add to the depth and the complexity of my understanding.

MR. PRUDEN: I think at this time what I'd like to do is, since I've had you talking for over an hour now, why don't we go ahead and take a break for maybe about 15 minutes or so, and that'll give me an opportunity to take a look at the report, and that might

expedite things.

(Recess from 2:35 p.m. to 2:48 p.m.)

BY MR. PRUDEN:

Q. What indicates to you or what indicia are there for you that suggest Mr. Thompson was displaying significant signs of mental illness from the time he was a small child? How do you arrive at that conclusion?

A. During my interview with Mr. Thompson's sister -- and let me say all of her names -- Ms. Nora Jean Hall Wharton, Ms. Wharton spontaneously began to talk to me about Mr. Thompson's behavior in the time period immediately following their mother's death.

By the time of the first grade, Mr. Thompson, when he was being yelled at by his grandmother, she was reportedly verbally abusive in the following fashion: She would yell at him you have the devil in you, boy. She would then observe Mr. Thompson standing or sitting beside a wall repeatedly banging his head into the wall. She, in her role as protector of him, would ask him what was going on, and he would tell her he was trying to knock the devil out of his head. She recalls at the time, although she was quite young herself, being worried about his behavior and thinking of it as very odd.

One of the things that we know about people who develop thought disorders is that frequently in childhood

you'll see one or more peculiarities in behavior. This would certainly fit in that category. She recalls other instances.

Q. Sort of a self-punishment or a self-exorcism type thing?

A. A self-injurious behavior is what we would call it I think. Mr. Thompson, when he was Greg, in the first and second and third grade had rather frequent hysterical crying episodes in classrooms that Ms. Wharton recalls also as very unusual in the context of his schoolroom situation. She describes him as being the subject of torment on the part of the students because he behaved in an odd fashion. Sometimes he would simply begin to cry and wail and scream and apparently made a sound like a fire engine when he was sobbing and developed the nickname Fire Engine. That's reported in the trial transcript. She told me much more detail about actually the extent of those kind of emotional outbursts.

At home it was rather common for Mr. Thompson to begin to cry and scream during times when Ms. Wharton herself was being beaten by their grandmother. Ms. Wharton was the victim of physical abuse on the part of the grandmother. Mr. Thompson observed much of this since they were together virtually all of the time, and Nora Wharton was not really permitted much interaction

outside of their home.

Q. Did Ms. Wharton tell you how she was beaten?

A. Yes. She was beaten with what she referred to as a tennis shoe on one occasion.

Q. Like a sneaker?

A. Yes. In the street in front of the neighbors, beaten to the point where she had to be assisted in walking home afterwards. She was beaten with an electrical cord at some point. Mr. Thompson observed both of those beatings and became hysterical.

She recalled another episode during which her biological father was brutally beating and raping their mother on the floor in front of them when the children were quite small, perhaps Mr. Thompson was himself three or four. She was maybe four or five. Mr. Thompson's reaction to that was to stand and scream and scream and scream and scream during the entire episode.

Any of the -- taking the self-injury aside, setting that aside, any one of those behaviors in isolation might not be particularly significant. Putting them together, we begin to see a pattern of intense emotional reactivity.

Q. So basically, if I understand it, it's the self-injurious behavior and the crying and the way you see him reacting to these physical abuses of others?

A. Yes.

Q. And that is indicative of a sign of mental illness to you? I just want to make sure that I'm understanding what you're telling me. If I'm not, please explain it to me.

A. I think I understand your question. It is an early indicator of a problem that's likely to develop. With the benefit of hindsight, it takes on the significance of a precursor, because then we see the escalating pattern of dysfunction and abnormality.

Q. Sort of a causal relationship is what you're seeing developing?

A. I'm not sure what causes what. There are often early indices of later mental illnesses that you don't know exactly what it's going to look like later, but you realize in looking at the child that there's a high likelihood that something is not going to be right when that person achieves maturity.

Q. Because of the environment, for example, in which he's growing up?

A. Perhaps. Perhaps because of the genetics involved. Perhaps because of the situations he's exposed to, as you said, the environment. Perhaps because of whatever factors there are. Perhaps nutrition plays a role in this. These children were without food for

significant periods of time as well. I don't know all of the reasons, but what I know is that if you look back in the childhood of this man, the beginnings of mental illness are apparent.

Q. Besides Ms. Wharton's report of lack of food, have you seen any evidence that the children were taken away because of malnutrition?

A. No. Ms. Wharton did tell me, however, that there was a neighbor who had planned to make a report to Social Services, so perhaps I'll have the opportunity to interview that neighbor as well.

Q. And is there authority in terms of -- strike that. You don't know to what degree the children were malnourished then?

A. No. I don't know. I do know that -- and this is confirmed by the grandmother -- in the six weeks approximately following their mother's death, the children were left alone virtually all of the time because Ms. Lamar was drunk and in bed, and so we have a five, a six, and a seven-year-old child in a house with no food. They would occasionally steal money from underneath her mattress while she was sleeping, and one of them would go to the store to try to find some food. Occasionally a neighbor would provide them with a meal or a can of food. I don't know whether they were

malnourished over an extended period of time. I do know that there is, from Ms. Wharton's perspective, rather serious psychological damage from that time.

Q. You have no medical documentation showing any malnourished condition or that it's caused some problem with his brain, do you?

A. I don't. These children were never taken to the doctor, so there wouldn't be any medical documentation. There's probably documentation in the school system. According to Ms. Wharton, Ms. Lamar was so drunk at the beginning of the school year following their mother's death that she forgot to sign the children up for lunches at school. They didn't have anything to eat during the day, so they forged her signature on a permission slip so that they could eat. They were discovered and punished by the school superintendent people, and a form was sent home to Ms. Lamar. She then signed it, and the children were able to eat lunch after that point. A couple weeks passed for all of that to get straightened out.

Ms. Wharton has undergone a lot of therapy in recent years and says that she's now able to describe situations that she wasn't very comfortable acknowledging to herself, these being one of them.

Q. Your diagnosis for Mr. Thompson is

schizoaffective disorder, comma, bipolar type. What leads you to that diagnosis from what you've reviewed and your testing results?

A. What leads me to the diagnosis is that there is a long history, perhaps at this point almost a 20-year history, of simultaneous thought disorder on the part of Mr. Thompson documented throughout all the records, and affective disorder, emotional disorder, being unable to regulate his emotions, sometimes falling into the pits of despair and becoming suicidal, sometimes becoming highly agitated and manic and having too much energy, too much exuberance, and grandiose thinking. The thought disorder is manifested in persecutory ideas, delusions of grandeur -- lots of different kinds of delusions actually -- auditory hallucinations that he sometimes admits to, sometimes suspected by the doctors who are doing the examination.

The psychological testing early on in Mr. Thompson's incarceration confirm the presence of a psychotic process. There was an MMPI administered to him by a prison psychologist in 1990 that is described as valid and indicative of psychotic process, and throughout the prison record he receives a variety of diagnoses that take into account both thought disorder and affective illness.

The very best diagnosis to describe all of the complex of symptoms that I just talked to you about is schizoaffective disorder, bipolar type.

Q. You note in your report Mr. Thompson was observed having a significant change in behavior after he was discharged from the Navy. What significance do you attach to that fact?

A. Well, it's interesting, because the state Court of Appeals actually notes this, that prior to his entry into the military Mr. Thompson is described almost uniformly -- well, in fact, uniformly according to their opinion -- as passive, as compliant, as eager to please, as gentle, as timid, as eager to run from attacks.

At some point -- and we don't know, because I haven't seen any psychiatric records from the military at this point; I don't know if there are any -- we don't know whether or not the change in Mr. Thompson is perceived as other than behavioral disruption, but, in fact, his description of that time is that he began to notice that people were trying to hurt him all the time, that officers and other people of his rank and slightly above his rank attempted to provoke him, that they sometimes physically assaulted him, that he thought he was being followed a lot, and that he sometimes struck out in what he thought was defense and then later found

out from other people who he knew and trusted that there wasn't anything to defend against or that there might not have been anything to defend against.

Q. This is what he related to you during your interview last August?

A. Right. The people who saw him after the military each were struck by how very different he seemed. That was the word that kept being used, "different." Sometimes the people I was speaking to were not able to describe what different meant, but, for example, the grandmother said that he was different as in not right, that he wasn't himself. Ms. Wharton tells me that the grandmother was very well aware that he was in deep psychological distress, and, in fact, the grandmother suggested that he be taken to the psychiatric unit at Grady Hospital in Atlanta, I believe, for treatment. The grandmother observed him staring off into space for long periods of time. She observed him mumbling to himself. When she asked him what he was doing, he told her he had no idea what she was talking about. She said that was very different from the boy who left her to go into service.

The sister has even a better glimpse of him than that, because he actually went to live with her for a while, and she said he was bizarre. She described him

as paranoid. She said that he would explode for no reason at all, that she was afraid of him for the very first time in her life, that they had always been terribly close, the sort of close where if there was only one piece of bread to eat they would share it, that they always looked out for one another, and that suddenly he was behaving in ways that she simply could not identify. She described three very serious episodes of aggression and emotional upset that she said are what led her to approach her grandmother about what to do for treatment for him.

Q. Did they ever attempt to get treatment for him?

A. No, they did not.

Q. And did they say why?

A. No. Ms. Wharton did not say why. She said that she felt greatly guilty about that.

Q. You state that the schizoaffective disorder, bipolar type, would substantially impair Mr. Thompson's ability to conform his conduct to the requirements of the law. How so?

A. There are points in time when Mr. Thompson is out of contact with reality. He is responding to situations that simply don't exist or that he perceives in extremely exaggerated or different form. A person is not able to conform one's conduct to the law if you are

frankly delusional or hallucinating in some way. Mr. Thompson over the years has had both of those symptoms.

Q. So it's this delusional aspect of this disorder that is the main factor that would keep him from having the ability to conform his conduct to the requirements of law, if I understand you correctly?

A. Is it the main factor? Let me say that I think it's at least as potent a factor if not more as the other aspect of his mental illness, which is that he has emotional disregulation.

Q. Meaning?

A. Meaning Mr. Thompson often is not in control of his emotions. He has episodes of rage, of aggression, that he doesn't understand or relate to very well. He's told about them later. Sometimes he remembers them, sometimes he doesn't. He is often embarrassed about his behavior afterwards, but there are points at which I believe he's not in control of what he's doing.

Q. When you say "he's not in control of what he's doing," are you saying that it's impulsive behavior?

A. If I am emotionally disregulated, if I'm over-aroused and overreactive and I operate out of a faulty belief system, so that not only do I have the impulse to do things that I ordinarily wouldn't, but I

also think things are going on that aren't, I have a combination in which yes, I suppose you could call it impulse, but you also have to take the notion into account that it might be an impulse to do something that doesn't make any sense.

Q. Does this disorder prevent Mr. Thompson from planning his activities?

A. Sometimes, yes, it does.

Q. And so the inability to plan, would that be a factor that would prevent him from conforming his conduct to the requirements of the law?

A. If that were in operation at some time. In the history of the Department of Corrections' mental health records, when he's properly medicated I don't think that's true about him.

Q. Is it your professional opinion, then, that when he is medicated he has the ability to plan, but when he is not medicated he does not always have the ability to plan?

A. Those two things are true. It's also true that if he's inadequately medicated or improperly medicated he doesn't have the ability to plan anything. I don't know whether he has impulses. I think he's all impulse, so to have impulses implies that there's a part of you that's not impulsive. For example, when Mr. Chavis and I saw

him during my second interview with him, he could not have planned anything at all, not beyond the nanosecond in which he was experiencing the world. But he was receiving psychotropic medications at the time, so that's why I have to put that qualifier in there.

Q. What evidence prior to his incarceration do you have that Mr. Thompson was hallucinating or suffered hallucinations -- excuse me, experienced hallucinations?

A. Well, the evidence of hallucinations is an interesting thing since the only way that we know if somebody is hallucinating is if they tell us. If you're asking me if there's documentation, the answer is no, because Mr. Thompson never was taken for treatment as best I know. He doesn't remember, at least according to his report to me, whether he received any treatment in the military. He remembers being told that he needed treatment in the military, and he remembers that he thought he wanted to see a psychiatrist in the military. He cannot remember if he actually ever saw such a doctor. It's possible that there are records that exist that will have exactly the evidence that you're talking about, but I haven't seen them.

Q. Have you attempted to obtain his military medical records?

A. Do you mean have I asked Mr. Chavis to get

those for me? Yeah, I have. I don't know what they'll show. I rather suspect that Mr. Thompson never received any medical treatment of a psychiatric nature in the military. He didn't like to tell anyone about what was happening to him. The evidence that I have has to do with the reports of people who observed him, who observed him moving his lips and talking when there wasn't anyone present, that being his grandmother.

Q. And this is after his return, correct?

A. Yes. And I have Mr. Thompson's report. He wasn't happy to talk about it is my opinion, but he acknowledged to me that it's possible that when he thought he was being followed while he was in the military that maybe there wasn't anyone there. And when he saw people looking in his window, which would qualify as hallucination, it's possible that there wasn't anyone there looking at him either.

Q. Do you know if Mr. Thompson has filed any kind of claim with the Veterans Administration for his condition while in the military?

A. I don't have any idea.

Q. Any other evidence in the record prior to his incarceration that would be indicative to you that he was experiencing hallucinations --

A. No.

Q. -- other than his self-report?

A. And the report of the sister and his grandmother. Are we talking about just documents?

Q. Yes.

A. No. No documents.

Q. Or any other reports from other individuals?

A. Not at this time, no.

Q. Bear with me for just a minute, please.

A. Sure.

Q. You're familiar are the term malingering?

A. I am.

Q. What steps during your evaluation process have you undertaken to determine whether or not Mr. Thompson might be malingering?

A. The MMPI-2 has several scales that are set aside to elicit the possibility of trying to portray one's self in an inaccurate manner. Mr. Thompson performed within normal levels on all the validity scales. Dr. Blau gave Mr. Thompson several measures of malingering, and he scored within normal limits on all of those. There are normal test results found within the prison records, and I have my almost 20 years as a clinical psychologist with which to make clinical judgments.

MR. PRUDEN: I believe that's all the questions

I have. Steve?

MR. KISSINGER: None.

(Signature reserved.)

(Whereupon, at 3:16 p.m., the taking of the instant deposition ceased.)

_____

Signature of the Witness

SUBSCRIBED and SWORN TO before me this ____ day of _____, 19__.

_____

NOTARY PUBLIC

My commission expires: _____

E R R A T A S H E E T

RE: GREGORY THOMPSON v. RICKY BELL, WARDEN

DEPOSITION OF: FAYE E. SULTAN, PH.D.

Please read this original deposition with care, and if you find any corrections or changes you wish made, list them by page and line number below. DO NOT WRITE IN THE DEPOSITION ITSELF. Return the deposition to this office after it is signed. We would appreciate your prompt attention to this matter.

To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

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CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)
COUNTY OF CABARRUS)

I, Dayna H. Lowe, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

DAYNA H. LOWE
Court Reporter
Notary Public in and for
County of Cabarrus
State of North Carolina

My commission expires July 22, 2002.

United States District Court

Western DISTRICT OF North Carolina

Gregory Thompson

V.

Ricky Bell, Warden

SUBPOENA IN A CIVIL CASE

CASE NUMBER: E.D. Tenn. No. 4:98-CV-6

TO: Paye Sultan, Ph.D.
8430 University Executive Park Dr.
Suite 690
Charlotte, North Carolina 28262

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM:
	DATE AND TIME:

☒ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Mecklenburg County District Attorney's Office 700 E. Trade Street Charlotte, North Carolina	22 July 1999 1:00 p.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects):
All items listed in Attachment "A" to this subpoena

PLACE	DATE AND TIME
Mecklenburg County District Attorney's Office 700 E. Trade Street Charlotte, North Carolina	22 July 1999 1:00 p.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more offic directors, managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matte on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

[illegible] K. Gilbert Attorney for Petitioner	DATE 9 Jul 99
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Glenn K. Gilbert, Assistant Attorney General 425 Fifth Avenue, North, Nashville, Tennessee 37243, (615) 741-8207	

(See Rule 45, Federal Rules of Civil Procedure Parts C & D on Reverse)

If action is pending in district other than district of issuance, state district under case number.

EXHIBIT
1
7-23-99

Faye E. Sultan
Curriculum Vitae
October 19, 1996

PRESENT STATUS

University Psychological Associates, P. A.
Director, Clinical Psychology and Forensic Consulting Practice

EDUCATION

University of North Carolina at Chapel Hill 1974-1977 B.A.
University of Georgia 1978-1980 M.S.
University of Georgia 1980-1982 Ph.D.

PROFESSIONAL EXPERIENCE

University Psychological Associates, P.A., Charlotte, N.C.
1985-present
Director

University of North Carolina at Charlotte, Charlotte, N.C.
1984-1988
Assistant Professor

University of North Carolina at Charlotte, Charlotte, N.C.
1982-1984
Lecturer

University of Georgia, Athens, Georgia
1981-1982
Clinical Supervisor

University of North Carolina at Chapel Hill,
Department of Psychiatry, Chapel Hill, N.C
1980-1981
Clinical Intern

University of North Carolina at Chapel Hill, Chapel Hill, N.C.
1980-1981
Instructor

Planned Parenthood Association, Atlanta, Georgia
1977
Health Educator
Women's Health Couseling Services, Inc.,Chapel Hill, N.C.
1975-1977
Director

CONSULTING ACTIVITIES

University of North Carolina at Charlotte
Couseling Center
1982-1984
Associate Staff Member (Clinical Psychologist)

North Carolina Correctional Center for Women, Raleigh, N.C.
1982-1988
Consultant

WomenReach, Charlotte, N.C.
1983-1987
Consultant

North Carolina Department of Corrections
Treatment Facility for Women (Half-way House). Charlotte, N.C.
1983-1985
Consultant and Member of the Community Advisory Board

Sheriff's Citizen's Advisory Committee, Mecklenburg County, N.C.
1985-1987
Member

M.E.A.N. (Missing, Exploited, Abused Children's Task Force).
Community Services Network to Prevent and Treat the Abuse of Children. Mecklenburg County, N.C.
1986
Member

ECO (Energy Committed to Offenders) Women's Halfway House
Steering Committee, Charlotte, N.C.
1986-1987
Member

L.A.M.P. (Legal Assistance to Mothers in Prison) Guilford County
Women's Residential Facility, Greensboro, N.C.
1986-1987
Member, Board of Directors and Clinical Consultant.

The North Carolina Department of Corrections.
1987-1988
Co-designer and clinical consultant for a treatment program for physically/sexually abused female inmates funded by the Department of Corrections (This program was developed and implemented with funding from the Z. Smith Reynolds Foundation 1984-1987).

Mecklenburg County Community Penalties Program Committee
1987-1989
Member, Board of Directors

North Carolina Department of Crime Control and Public Safety
Community Penalties Programs Sex Offender Committee
1988
Co-Chair

Western Carolinians for Criminal Justice, Asheville, N.C.
"Women at Risk", A Treatment Project funded by Buncombe County United Way and the State of North Carolina.
1988-present
Clinical Consultant

Child Mental Health Evalution Program
1988-present
Consulting Evaluator

North Carolina Alternative Sentencing Association
1989
Member, Board of Director

Sexual Assault/Domestic Violence Advisory Committee NC
Council on the Status of Women
1990-1994
Committee Member

PUBLICATIONS AND RESEARCH

Chapters in Books

Sultan, F.E. & Kearney, D.A., Anxiety disorders. In Goodstein, L., & Calhoun, J. (1982) Understanding Abnormal Behavior. Boston: Addison-Wesley.

Kearney, D.A., Sultan, F.E. & Calhoun, J. Normal and Abnormal reactions to stress. In Goodstein, L., & Calhoun, J. (1982). Understanding Abnormal Behavior. Boston: Addison-Wesley.

Sultan, F.E. & Chambless, D.L. Pubococcygeal function and orgasm in a normal population. In B. Graber. (1982). Circumvaginal Musculature. Basel, Switzerland: S. Krager.

Sultan, F.E., Long, G.T., Kiefer, S.A., Schrum, D.M., Selby, J. W., & Calhoun, L.G. The female offender's adjustment to prison life: A comparison of psychodidactic and traditional supportive approaches to treatment. In S. Chaneles (Ed.). (1984). Gender Issues, Sex Offenses and Criminal Justice: Current Trends. The Haworth Press, New York.

Long, G.T., F.E., Kiefer, S.A., & Schrum, D. The psychological profile of the female first offender and the recidivist. A comparison. In S. Chaneles (Ed.). (1984). Gender Issues, Sex Offenses, and Criminal Justice: Current Trends. The Haworth Press, New York.

Sultan, F.E., & Chambless, D.L. Sexual functioning in women. In E. Blechman (Ed.). (1985). Behavioral Medicine for Women. Pergamon Press.

Long, G.T. & Sultan, F.E. The sociological perspective. In L. Diamont (Ed.). (1987). The Psychology of Male and Female Homosexuality. Hemisphere Press, New York.

Sultan, F.E., Elmer, D., & Smith, J. Egodystonic homosexuality. In L. Diamont (Ed.). (1987). The Psychology of Male and Female Homosexuality. Hemisphere Press, New York.

Articles in Refereed Journals

Stiles, W.B., & Sultan, F.E. (1979). Verbal response mode use by clients in psychotherapy. Journal of Consulting and Clinical Psychology, June, 611-613.

Chelune, G.J., Sultan, F.E., & Williams, C.L. (1980). Loneliness, self-disclosure and interpersonal effectiveness. Journal of Counseling Psychology, 27, 5, 462-468.

Chambless, D.L., Stern, T., Sultan, F.E., Goldstein, A., Williams, A., Lifshitz, J., Hazzard, M., & Kelly, L. (1982). The pubococcygens and female orgasm: A correlational study with normal subjects. Archives of Sexual Behavior, 11, 6, 479-490.

Chelune, G.J., Sultan, F.E., Vosk, B.N., Ogden, J.K., & Waring, E. (1984). Self-disclosure patterns in clinical versus non-clinical couples. Journal of Clinical Psychology, 40, 1, 213-215.

Chelune, G.J., Waring, E.M., Vosk, B.N., Ogden, J.K. (1984). Self-disclosure and its relationship to marital intimacy. Journal of Clinical Psychology, 40, 1, 216-219.

Chambless, D.L., Sultan, F.E., Stern, T.E., O'Neill, C., Garrison, S., & Jackson, A. (1984). Effect of pubococcygeal exercise on coital orgasm in women. Journal of Consulting and Clinical Psychology, 52, 1, 114-118.

Sultan, F.E., Long, G.T., Kiefer, S.A., Schrum, D., Selby, J.W. & Calhoun, L.G. (1984). The female offender's adjustment to prison life: A comparison of psychodidactic and and traditional supportive approaches to treatment. Journal of Offender Counseling, Services and Rehabilitation, 9, 1 & 2, 49-56.

Sultan, F.E. (1984). Women in prison: Their mental health needs. Feminist-Behaviorist Newsletter, V, 2, 4-6.

Long, G.T., Sultan, F.E., Kiefer, S.A., Schrum, D. (1984). The psychological profile of the female first offender and the recidivist: A comparison. Journal of Offender Counseling, Services and Rehabilitation, 9, 1 & 2

Sultan, F.E. & Johnson, P.J. (1985). Characteristics of dropouts, remainers, and refusers at a psychological rehabilitation program for the chronically mentally disabled. Journal of Psychology, 19, 2, 175-184.

Sultan, F.E., Long, G.T., & Kiefer, S.A. (1986). The application of psychodidactic support groups to facilitate the female offender's adjustment to prison. Psychotherapy, 23, 469-471.

Sultan, F.E., Long, G.T., Wilson, D., & Fennell, J. (1987). Sexual and physical abuse: Breaking the cycle. 116th Congress of Corrections Proceedings.

Long, G.T. & Sultan, F.E. (1988). A special problem in correctional counseling: The elderly inmate. Journal of Offender Counseling, Services and Rehabilitation.

Sultan, F.E. & Long, G.T. (1988). Treatment of the sexually/physically abused female inmate: Evaluation of an intensive short-term intervention program. Journal of Offender Counseling, Services and Rehabilitation, 12, 2, 131-143.

PAPERS PRESENTED AT STATE, REGIONAL, AND NATIONAL CONFERENCES

Seminar facilitator for Women in Graduate School. Southeastern Psychological Association, Washington, DC, March, 1980.

Sultan, F.E., Chambless, D.L., Stern, T., Williams, A., Lifshitz, J., Hazzard, M., & Kelly, L. The Relationship Between Pubococcygeal Strenngth and Female Orgasmic Response in a Normal Population. Association for Advancement of Behavior Therapy, N.Y., Nov., 1980.

Vosk, B.N., Chelune, G.J., Sultan, F.E., Ogden, J.K. & Waring, E. Differences in Self-Disclosure Patterns in Clinical and Non-Clinical Couples. Southeastern Psychological Association, Atlanta, Georgia, March, 1981.

Sultan, F.E., Chambless, D.L., O'Neill, C., Garrison, S., & Jackson, A. The Effect of Pubococcygeal Exercise on Female Orgasmic Response. Southeastern Psychological Association, Atlanta, Georgia, March, 1981.

Chelune, G., Vosk, B. N., Sultan, F. E., Ogden, J. K., Waring, E. Marital Intimacy and Self-Disclosure. American Psychological Association, Los Angeles, California. September, 1981.

Sultan, F. E., & Johnson, P. Factors Contributing to Dropout in a Psychological Rehabilitation Program for the Chronically Emotionally Disabled. Southeastern Psychological Association, Atlanta, Georgia. March, 1983.

Sultan, F. E., Long, G. T., Kiefer, S. A., & Schrum, D. The Female Offender's Adjustment to Prison Life: A Comparison of Psychodidactic and Traditional Supportive Approaches to Treatment. Southeastern Psychological Association, New Orleans, Louisiana, March, 1984.

Sultan, F.E., Fennell,J., & Wilson, D. Sexual and Physical Abuse: Breaking the Cycle. Invited address to the North Carolina Correctional Association Annual Conference, Greensboro N.C., November. 1985.

Sultan, F.E. How to do a Better Assessment Interview that Confronts Race, Sex, and Class Issues. Invited training workshop for the North Carolina Community Penalties Program Staff Training, Boone, N.C., 1986.

Sultan, F.E., Long, G. T., Fennell, J., & Wilson, D. Sexual and Physical Abuse: Breaking the Cycle. Invited address to the 116th Annual Conference of the American Correctional Association, Las Vegas, Nevada, August, 1986.

Sultan, F.E., & Tyson, W.M. Abused Clients: What do we Need to Know about Battered Women's Syndrome and Abused Children's Syndrome in Developing Community Punishment Plans? Invited address to the North Carolina Community Penalties Program Staff Training, Boone, North Carolina, November, 1987.

Sultan, F.E. The Detection, Treatment, Counseling, and Prevention of Family Violence. Invited address to the Second National Workshop on Female Offenders, Raliegh, North Carolina, April, 1987.

Tyson, W.M., & Sultan, F.E. Community Penalties Programs and Sentencing the Sex Offender. Invited workshop at the North Carolina Community Penalties Program Staff Training Conference, Winston-Salem, N.C., February, 1988.

Sultan, F.E., & Lancaster, J., Juvenile/Adult Female Offenders: A Legacy of Abuse. Invited workshop at the Southen States Correctional Association, 19th Annual Conference, Charleston, West Virginia, July, 1988.

Sultan, F.E. The Victim's Point of View. Invited presentation as panelist at Marital Rape Conference funded by Western Carolinians for Criminal Justice, Asheville, N.C., February, 1989.

Sultan, F.E., & Clarke-Sayer, E., Women at Risk: A Community Treatment Model for Female Offenders. Invited workshop at the Fourth Annual North Carolina Community Penalties Training Conference, Greensboro, N.C., March, 1989.

Sultan, F.E. Looking Beneath the Surface: The Assessment Treatment and Placement of Non-Violent Offenders. Invited moderater for training seminar at the North Carolina Community Penalties Progran Staff Training, Raleigh, N.C., June, 1989.

Sultan, F.E. Outpatient Treatment of Severly Physically/Sexually Abused Adults and Adolescents. Invited presentation to the Charoltte Psychiatric Society, Charlotte, N.C., October, 1989.

Sultan, F.E. The Reasons for the Journey: A Women's Journey...To Prison. Keynote address at a seminar sponsored by the Episcopal Diocese of North Carolina, Greensboro, N.C., November, 1989.

Sultan, F.E. The Role of a Psychologist in Child Sex Abuse Cases: A View from North Carolina. Invited presentation to a criminal law seminar sponsored by the North Carolina Academy of Trial Lawyers, Charlotte, N.C., March, 1990.

Sultan, F.E. Recognizing and Assessing Abuse as Potential Mitigation. Invited presentation to the North Carolina association of Public Defenders, Wrighsville Beach, N.C., May, 1990.

Sultan, F.E. Between the Cracks: Incarceration, Substance abuse, and Reproductive Health Needs of Women. Invited presentation to the 6th Annual Addiction Conference: Focus on Women. Boone, N.C., May, 1992.

Dayan, M., Stein, G., & Sultan, F.E. Mitigation Evidence/Investigation: Conceptualization and Presentation. Invited presentation to the North Carolina Academy of Trial Lawyers, Greensboro, N.C., September, 1992.

Hill, H. & Sultan, F.E. Presenting Expert Testimony: Selection and Preparation of the Expert. Invited presentation to the North Carolina Bar Foundation Continuing Legal Education Seminar, Greenville, N.C., August, 1993.

Sultan, F.E. & Engel, G. Presenting Expert Testimony: The Expert's Perspective. Invited presentation to the North Carolina Academy of Trial Lawyers, Greensboro, N.C., September, 1994.

Britton-Watkins, C., Hahn, T., Lewandowski, D., Sultan, F.E. Human Bio-Psycho-Social Development and Change. Invited panel presentation for North Carolina Community Penalties Programs Case Developer School, Office of the Courts, Chapel Hill, N.C., June, 1995.

Sultan, F.E. & Lancaster, J. Managing the ...Isms Within Us: Cross-Cultural and Other Issues Relating to Managing Women and Girls. Invited presentation at The Sixth National Workshop on Adult and Juvenile Female Offenders, Myrtle Beach, South Carolina, November, 1995.

Sultan, F.E. The Impact of Violence on Women and Children. Invited presentation at The Sixth National Workshop on Adult and Juvenile Female Offenders, Myrtle Beach, South Carolina, November, 1995.

Sultan, F.E. The Task of the Mitigation Specialist in Assessing Posttraumatic Stress Disorder and Childhood Abuse Issues. Invited presentation for mitigation expert training seminar sponsored by the Center for Death Penalty Litigation, Inc., Chapel Hill, North Carolina, September, 1996.

UNPUBLISHED ARTICLES

Sultan, F.E. Ward behavior changes as a function of patient groups at a state mental hospital. University of North Carolina at Chapel Hill, 1977.

FUNDED RESEARCH

The female offender's adjustment to prison life: A comparison of psychodidactic and traditional supportive approaches. North Carolina Correctional Center for Women, Raleigh, North Carolina, (UNCC Summer Grant), 1983, $1,000.

Lack of intimacy as a factor in depression. (UNCC Summer Grant), 1984, $1,750.

The physcially/sexually abused female inmate: Her crime and its relationship to her early history. An intensive intervention strategy introduced at the North Carolina Correctional Center for Women. Z. Smith Reynolds Foundation, 1984, $32,600.

The effects of prison housing on the psychological well-being of the female inmate. (UNCC Summer Grant), 1986, $1,950.

The use of the psychodidactic treatment model for physically/sexually abused female offenders in community and institutional coirrectional settings. Treatment program implemented at Fountain Correctional Center and Re-Entry, Inc. Funded by the Z. Smith Reynolds Foundation, 1986-1987, $30,000.

HONORS AND AWARDS

1982 William K Boardman Award for Outstanding Clinical Psychology Graduate Student.
University of Georgia, Athens, Georgia.

1981 University-Wide Assistantship
University of Georgia, Athens, Georgia.

1980 Award for Outstanding Graduate Student Research
Association for the Advancement of Behavior Therapy

1977 Graduated Cum Laude
University of North Carolina at Chapel Hill

1977 Psi Chi, Psychology Honor Society
University of North Carolina at Chapel Hill

1976 Phi Beta Kappa
University of North Carolina at Chapel Hill

PROFESSIONAL AFFILIATIONS

American Psychological Association, Member

Southeastern Psychological Association, Member

American Correctional Association, Member

North Carolina Correctional Association, Member

Psychological Health Care of North Carolina, Member

LICENSURE

1982 Licensed in North Carolina as a Practicing Psychologist

1988 Fellow and Diplomate
American Board of Medical Psychotherapists

ATTACHMENT
GREGORY THOMPSON EVALUATION
DOCUMENTS REVIEWED AS OF 7-22-99

July 15, 1999 Deposition Testimony Theodore H. Blau, Ph.D.

1999 Clinical Testing Data of Theodore H. Blau, Ph.D.

April 6, 1999 Psychological Report of Theodore H. Blau, Ph.D.

November 18, 1994 Affidavit of Gillian Blair, Ph.D.

November 21, 1990 Affidavit of Brock Mehler, Investigator and Mitigation Specialist

Post-Conviction Hearing Testimony of: Gillian Blair, Ph.D.
Mr. Mike Bryant, Vocational Instructor at RMSI
Ms. Cheryl Donaldson, counselor on RMSI Death Row

1999 Deposition Testimony of: Ms. Teresa Martin
Ms. Sherry Diane Carter Bertok Downs
Mr. Jeff Colonge
Dee Lambert, Ph.D.

August 14, 1985 Deposition Testimony of Glen Watson, Ph.D.

May 27, 1985 Psychological Evaluation from Middle Tennessee Mental Health Institute

1985 Trial Testimony of: George Ellis Copple, Ph.D.
Sgt. Roy Phillips
Floyd Mack, Sr.
Ms. Cheryl Hammond
Ms. Geneva M. Woods
Ms. Maybelle Lamar
Mr. Doc Lamar
Mr. Curtis James Thompson
Mr. Earl Weaver
Mr. John Hall
Ms. Nora Jean Hall Wharton
Mr. John Hollis
Mr. Roy Hewgley
Ms. Arlene Cajulao
Mr. Jim Creighton

EXHIBIT
3
7-22-99 dfl

1985 Trial Cross-examination Testimony of Investigator Floyd

January 3, 1985 Handwritten Statement of Mr. Gregory Thompson

January 25, 1985 Statement of Steven Graves

January 27, 1985 and January 28, 1985 Statements of Jay Vickers

January 24, 1985 Tennessee Bureau of Investigation Synopsis of Investigation

January 2, 1985 Supplemental reports of Sgt. Hill and Sgt. Parker

January 3, 1985 Map drawn by Mr. Gregory Thompson

Tennessee Department of Corrections Administrative Policy No. 503.03

January 9, 1985 Statement of Sgt. Phillips, Tennessee Highway Patrol

Disciplinary decision reports on Mr. Gregory Thompson from 1985 to 1998.

Undated Letters apparently written by Mr. Thompson to: Arlene Cajulao
Sandy
Shine
Dearest Cupcake

Undated Song apparently written by Mr. Thompson to Sandy

Undated Poem apparently written by Mr. Thompson to Sandy

Note indicating that Sgt. Peggy Sawyer found a capsule and a letter from Mr. Thompson to Sandy and indicating that all letters to Sandy were provided to the State on or about July 15, 1985

Extract of Mr. Gregory Thompson's U.S. Navy records taken from trial counsel's file, post conviction hearing Exhibit 3

April 20, 1988 Pro se Petition for records written by Mr. Gregory Thompson

August 14, 1995 Pro se Motion and Affidavit filed by Mr. Gregory Thompson to drop all further death penalty appeals

Suppression Hearing Testimony of: Mr. Gregory Thompson
Lt. Graham

S.A. Eubanks
D.A. Charron

Transcript of proceedings concerning Mr. Thompson's request to participate in his trial

July 1985 Motion to allow the Defendant to participate at trial

Supplemental motion for psychiatric examination and neurological examination

Pages 1-6 of the February 27, 1989 Tennessee Supreme Court Opinion on direct appeal outlining the facts of the case

Tennessee Department of Corrections Medication Records for Mr. Gregory Thompson continuous 1986 to February, 1999

Tennessee Department of Corrections Administrative, Medical, and Mental Health Records for Mr. Gregory Thompson continuous 1985 to February, 1999

ATTACHMENT

"E"

G-F-W Auditory Selective Attention Test

Category Test

Kaufman Neuropsychological Assessment Procedure

Luria Memory Test

Reitan-Indiana Aphasia Screening Test

Rey-Osterreith Complex Figure Test

Trailmaking Test (A & B)

Word Generation-F/A/B

Finger Oscillation Test

Wisconsin Card Sorting Test

5. The results of these tests indicate that Mr. Thompson suffers from significant auditory processing deficits. In addition, Mr. Thompson demonstrates impaired simple concentration, attention and mental flexibility as well as an abnormal variation between dominate and non-dominate finger oscillation.

6. While these results provide indicia of organic brain damage, Affiant's clinical observations and review of pertinent background material suggest that such organicity is secondary to other mental impairments.

7. It is Affiant's clinical impression that Mr. Thompson suffers from a major mental disorder/ thought disorder, to wit, that he suffers from schizoaffective disorder-bipolar subtype with organic components.

8. Persons suffering from schizoaffective disorder-bipolar subtype demonstrate episodes of delusions, hallucinations, disorganized speech (e.g., frequent derailment or incoherence), and/or grossly disorganized or catatonic behavior concurrent with a major manic or mixed episode or such an episode together with a major depressive episode. Onset of the disorder typically occurs in early adulthood.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

GREGORY THOMPSON,

Petitioner,

v.

RICKY BELL, Warden,

Respondent.

Case No: 4:98-CV-6
(Judge Edgar)

AFFIDAVIT

COMES NOW BARRY M. CROWN, Ph.D., and, being sworn upon his oath, states and affies as follows:

1. Affiant is licensed psychologist in the State of Florida. Affiant's curriculum vitae is attached hereto as Affidavit Exhibit A. A list of all cases in which Affiant has testified at trial or in deposition within the past four years is attached hereto as Affidavit Exhibit B.

2. Affidavit has been retained by counsel for Petitioner, Gregory Thompson to render an opinion regarding Mr. Thompson's mental health. A statement of the estimated compensation to be paid to Affiant for his study and testimony is attached hereto as Affidavit Exhibit C.

3. Affiant has reviewed voluminous background materials regarding Mr. Thompson which have been provided to him by counsel for Mr. Thompson. Such materials are available for inspection and/or copying upon request.

4. Affiant has conducted a clinical evaluation of Mr. Thompson including the aforementioned review of materials, a clinical interview, and the administration of the following test instruments:

Shipley Institute of Living Scale

RESPONDENT'S EXHIBIT 3

Further Affiant sayeth naught

Barry M. Crown, Ph.D.

STATE OF FLORIDA)
)
COUNTY OF DADE)

Subscribed, sworn to and acknowledged before me by Barry M. Crown on this the 20th day of July, 1999.

NOTARY PUBLIC

My Commission Expires:

7-9-2001

BARRY M. CROWN, Ph.D. PENTHOUSE SUITE 310 7800 RED ROAD SOUTH MIAMI, FLORIDA 33143 (305) 665-0771

EDUCATION

Ph.D. Florida State University, 1969
Post-Doctoral Fellow in Psychiatry (Psychology), Harvard Medical School, Massachusetts General Hospital, 1969-1970

CERTIFICATIONS

Licensed Psychologist (PY 002131), Board of Psychological Examiners, State of Florida
Certified Psychologist, Florida Association of Practicing Psychologists
Diplomate, American Board of Professional Neuropsychology
(Chair, Examinations Committee, 1994-1998)
(President-Elect, 1998-1999)
Diplomate, American Board of Forensic Examiners
Diplomate, American Board of Forensic Medicine
Diplomate, American Academy of Pain Management
Certified Addictions Specialist, American Academy of Health Care Providers in the Addictive Disorders

ADDITIONAL TRAINING

Forensic Psychology, American Academy of Forensic Psychology
Family Therapy, Institute for Juvenile Research, Chicago
SPECT Brain Imaging, Medical College of Wisconsin

ACADEMIC APPOINTMENTS

Courtesy Professor of Psychology
Florida International University

Adjunct Associate Professor of Psychiatry
University of Miami School of Medicine

PREVIOUS ACADEMIC APPOINTMENTS

Boston University; University of Illinois School of Medicine

OTHER EXPERIENCES (SELECTED)

Research Coordinator, Governor's office, State of Florida
Clinical Director, NIMH National Drug Abuse Training Center
Associate Director, National Council on Drug Abuse
Co-Director, Child Abuse Project, University of Miami School of Medicine, Jackson Memorial Hospital
Head, Neuropsychology Group, Miami Children's Hospital

PROFESSIONAL MEMBERSHIPS

American Psychological Association; Southeastern Psychological Association; Florida Psychological Association; American Psychology-Law Society; American College of Forensic Psychology (Fellow); National Academy of Neuropsychology; American College of Professional Neuropsychology (Fellow); American Academy of Neurology (Affiliate); International Neuropsychological Society; Society of Behavioral Medicine; Society of Nuclear Medicine; American Society of Neurorehabilitation; Royal Society of Medicine (Fellow); British Psychological Society (Foreign Affiliate); Royal Society of Health-London (Fellow); American Association for Marital and Family Therapy

Barry M. Crown, Ph.D.

I have made a reasonable attempt to gather this information. My records are not kept by date nor are litigation cases kept seperate from other clinical cases.

Cases involved (trial/deposition) during the last five years...

Stout v. Bratt, Limperis, & Holy Cross 90-31776 07
Morales v. Outtens 91-45426 CA 09
Wood v. Ring 92-1308
Carlisle v. Carlisle 91-51479 CA 29
Gonzalez v. Prestressed Systems 92-006565 (25)
Estate of Anna Maria Correa, Deceased 90-4966 (01)
Carter v. Amble Inn Motel & McCumber 92-32254 (07)
Estrada v. Coral Gables & Kinney 91-51853 CA 01
Perry v. Laidlaw Waste Systems 92-1442 CA 10
Doe v. Republic Health Corp. et al. 91-36709 CA 15
LaFontaine v. Otis Elevator, et al. 92-05019 (06)
State v. Thanh Le 93-3162-K
Gonzalez v. Parkview Pt. Condo Assoc. 051-75-4434
Reynoso v. Gold Coast Aerial, et al. 92-15911 CA 11
Pierre v. Naples Community Hosp. 90-3317 CA 01
State v. Bates 92-681
Warsing v. USA S. Dist. FL-Civ-Marcus
Carlson v. Brown, Fountain Engineering 95-02868 CA 15
Vernet & Vincent v. Univ of Miami, et al. 93-1602 CA 28
Caceres v. Zubi Supermarket 93-10392 (20)
Gordon v. Shanfield
Corcoran v. Salcheck 94-4364 (11)
Portanova, et al. v. Coca Cola, et. al. 94-02499 04
State v. Aldrich 95-489F
State v. Zakrzewski 94-1283-001
Pruitt v. Zolfaghari 92-01940 28
Brompton v. Poy-Wing 94-04311 (08)
Cohen v. Lewis 95-16490 (CA01)
Scheu v. Mendez 95-000084
Wouters v. U-Haul 95-11940 CA 21
Canale v. CAC Ramsey 93-18837 CA 15
Abreu v. Korst of Calif 033-60-3358
Morris v. Riverside 95-0914CA
Torrillon v. Granitz 94-0812109
Brown v. Wall 94-16284 CA 08
Taylor and Ray v. Public Health Trust, et al. 92-24060(24)
Vallescura v. Dube et al. 95-23758 CA 15
Chery v. First Property 94-03124
Varnum v. Miami Management 95-005648 11
Espinosa v. Grasmick, et al. 95-000615; 95-000618
Hodge v. Shands 92-4172-CA
Ewing v. Sellinger & Andersnn 92-5998 AD
Ewing v. Brown 94-482 AD
Judd v. St. Jospeh Mercy Hospital, et al. 97-549906-NH
Pascale v. Federal Express 94-010939 (06); 95-006911 CA 14
Epstein v. Zim American 97-3565-CIV-UNGARO-BENAGES

Exhibit C

Fee Schedule
$250 per hr records review, conferences
$350 per hr depositions, court appearances, including transit

ATTACHMENT

"F"

TENNESSEE DEPARTMENT OF CORRECTION 0000094 FOUR

PROBLEM ORIENTED - PROGRESS RECORD

AME:_____ NUMBER_____

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Riverbend Unit 2
Patient: Thompson, Greg
Medical record #: 108408

Note Date: 5/1/94
Note Printed on: 5/1/94 at: 12:57:41 PM
Treatment Day 669

Patient reports stable interval, though he feels more preoccupied with "his past." No reports of auditory or visual hallucinations. No difficulties with medications except for dyspepsia which is relieved with evening snack. Overall he has done quite well during the time that I have been treating him (7/92 till present) despite a significant history of psychosis requiring multiple medications.

Medications	Route	Days on Med	Days on Dose	AM	Noon	PM	HS	Comments
Mellaril	PO	669	669	0.00	0.00	0.00	100.00	

Axis	Diagnosis
1	Bipolar disorder

Service Provided
Medication

Duration
15

ROBERT HOEHN, MD

ATTACHMENT

"G"

2A218

TENNESSEE DEPARTMENT OF CORRECTION

MENTAL HEALTH TREATMENT PLAN

0000228

Inmate: Thompson, Greg Number: 108406 DOB: 12/64 Sex: M
(Last, First, Middle)

Referral Date: 1989 Facility: RMSI Treatment Status: Vol. Custody Status: Med

Assigned Treatment Program: Outpt. Treatment Plan Formulation Date: 3/94

Initial Treatment Plan: _____ or, Updated Treatment Plan: ✓

Presenting Problem: H/O of A.H., paranoid ideation

DIAGNOSIS

Axis I: 295.30 Schizophrenia, paranoid type
R/O _____

Axis II: V71.09 NONE
R/O _____

Axis III: NONE
R/O _____

Axis IV: 4

Axis V: 75

Rationale for Treatment Continuation: Continued symptoms

RECOMMENDATIONS	NEED(S)	REFERRAL
PSYCHOSOCIAL		
CHRONIC MEDICAL	None at this time	
HOUSING		
JOB ASSIGNMENT		
DISCIPLINARY		
OTHER (SPECIFY)		

Original: Inmate's Health Record
Programmatic Record
Warden

CR-3326 (Rev. 4/92)
Page 1 of 2 Pages

RDA 1458

TENNESSEE DEPARTMENT OF CORRECTION 0000229

MENTAL HEALTH TREATMENT PLAN

Treatment Period 3/94 To 3/95

PROBLEM	3 MONTH TX GOALS	6 MONTH TX GOALS	MODALITY/ FREQUENCY	DATE GOAL MET	PROVIDER
AH VH	↓ A+VH	Maintain ↓ A+VH	Pharmacotherapy		Puett, M.D.
			Psycho-therapy		Rutter, M.D.

Signatures: Inmate Greg Thompson Date: 108406

Comment(s): _____

Staff: Ind Tolmoyer Date: 3/16/94

Michael Rutter, M.S. Date: 3/16/94
Mental Health Professional(s)

Puett, MD Date: 3/16/94
Psychiatrist/Physician

Receiving Facility Provider: _____ Date: _____

Continue Current Plan: _____ Modification: _____ New Plan Required: _____

Original: Inmate's Health Record
Programmatic Record
Warden

CR-3326 (Rev. 4/92)
Page 2 of 2 Pages

RDA 1458

ATTACHMENT

"H"

TENNESSEE DEPARTMENT OF CORRECTION

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson, Gregory NUMBER: 108406

FORMAT: Problem Number and Title:

S - SUBJECTIVE O - OBJECTIVE A - ASSESSMENT P - PLAN

Date	Prob. No.	Code	
5/30/86			Examination W/K CPE Oriented X3
6/6/86	6		10 ODD superficial cuts on inside R/L arm cleaned & bandaged. Multiple healed, made surface cuts - I - Inmate states he will not cause T Tot AT this time. Will continue to observe
6-10-86	20	S	Multiple superficial lacs to R wrist & upper arm
		O	Pupils Eye to (R) wrist X 2 with second attempt appx. 3" long to subdermal & tissue
		A	Stiff inflicted lacs
		P	C.P.C. lac cleaned & bandaged - First aid rendered as above - admit to WIDU Dennis Hughes M.D.
6/10/86 10:40 pm			Pt. admitted to WI-10U per Dennis Hughes M.D. orders @ pt's request. 3" long full thickness slashing stiff applied plaster splints after dressing wounds of both wrists & pt placed in padded observation room. See nursing notes. Alan Gabbert RN
12-3-86			Patient case conference held on WI-10U on 6-20-86 per quarterly review on 6-20-86 at Shawnee Gail Gabbert

Do Not Write on Back CR-1884

TENNESSEE DEPARTMENT OF CORRECTION

EMERGENCY ROOM CARE

Date: 6/6/86 Time: 6 30 pm
Unit & Cell No. 13-1

Name Thompson Kay Number 105406

Physical Findings: (T)___(P)___(R)___(BP)___

Date of Last Tetanus Shot: X 1 yr. Tetanus Toxoid: Yes___ No___

Chief Complaint: Several superficial cuts on inside of (R) arm.

History: Has previously spoken w David Hoyt.

Special Exams: _____
(X-Ray) (EKG)

(Lab Work)

Diagnosis: _____

Treatment: Cleaned, Bacitracin ointment & bandage

ORDERS: 1. _____
2. _____
3. _____
4. _____

Person Notified and Time Called: David Hoyt 6:35 pm

Disposition: Back to unit I.

Transferred to: _____

Admitted to: _____

Discharged: _____ Time: _____ Date: _____

Instructions to Patient: _____

Patient can return to: Unit.

Patient will be followed: Yes X No__ When & Where by psych.

Danielle Hargrove
(Signature of Attendant or M.D.)

White - Health Record

TENNESSEE DEPARTMENT OF CORRECTION

EMERGENCY ROOM CARE

Date: 6-10-86 Time: 12:45
Unit & Cell No. 1

Name: Thompson, Gregory Number: 108406

Physical Findings: (T)___ (P)___ (R)___ (BP)___

Date of Last Tetanus Shot:_____ Tetanus Toxoid: Yes____ No____

Chief Complaint: Cut R wrist - Left neck lacerations

History:

Special Exams: (X-Ray) (EKG) (Lab Work)

Diagnosis: Self inflicted lacerations R wrist Left side of neck

Treatment: Cleaned & Sutured, Bacitracin ointment Applied, Sterile Dry dressing

ORDERS: 1. Sick Call as ord.
2.
3.
4.

Person Notified and Time Called: Davide Hyde

Disposition:

Transferred to:

Admitted to:

Discharged: ✓ Time: 12:55 p Date: 6-10-86

Instructions to Patient:

Patient can return to:

Patient will be followed: Yes ✓ No__ When & Where

Hyde Metton Lee
(Signature of Attendant or M.D.)

White - Health Record

TENNESSEE DEPARTMENT OF CORRECTION

EMERGENCY ROOM CARE

Date: 6-10-86 Time: 12:45
Unit & Cell No. 1

Name Thompson, Gregory Number 108406

Physical Findings: (T) 98 (P) 80 (R) 18 (BP) 140/90

Date of Last Tetanus Shot:_____ Tetanus Toxoid: Yes____ No____

Chief Complaint: Cut wrist of (R) arm

History:

Special Exams: (X-Ray) (EKG) (Lab Work)

Diagnosis: 2nd Self-inflicted lacerations to (R) wrist approx 5" long to back of wrist

Treatment: Cleaned with betadine w/ S.R. Plaster splint applied after sterile gauze pads were placed to wrist. Pt. was taken to Dr. Hyde's office. Unable to reach Dr. Davis's office

ORDERS: 1. Admit to W100 - per Daniel Huff
2. Suicide Precautions
3.
4.

Person Notified and Time Called: Cpl Mathews

Disposition:

Transferred to:

Admitted to: W 100

Discharged:_____ Time:_____ Date:_____

Instructions to Patient:

Patient can return to:

Patient will be followed: Yes ✓ No__ When & Where 6/10/86 Hospital W-100

Hyde Metton Lee
(Signature of Attendant or M.D.)

White - Health Record
Copy - File

CR-2005

TENNESSEE DEPARTMENT OF CORRECTION

ACCIDENT/TRAUMATIC INJURY REPORT

Name of Person Injured Thompson, Gregory 108406
Last First Middle Number

Employee ____ Inmate/Student ____ Visitor ____

Institution where Accident/Injury occurred TSP

Location within Institution where Accident/Injury occurred Unit E

Date of Injury 6-10-86 Time of Injury 12 05 PM

Date of Treatment 6-10-86 Time of Treatment 12 PM 12 PM - 1 PM.

Subject's Version of Accident/Injury Inj. left hand [illegible]

Witness/Third Party's Version of Accident/Injury, if any ____

Weapon, Property or Equipment involved ✓ Yes ____ No

If yes, specify Unknown.

Description of Injury/Diagnosis [illegible]

Disposition: (Check one) ✓ Treated by Institutional Health Personnel

____ Transported to Community Health Care Facility for outpatient treatment only
List Facility

____ Transported to Community Hospital for Inpatient Treatment
List Facility

____ Other - Explain ____

Did Death result from Accident/Injury? ____ Yes ✓ No

Signature of Examiner Hazel Shelton Date 6-10-86

Title LPN

Original: Health Record
Copy: Clinic File
Director of Health Services via Warden/Director

CR-2592 (Rev. 1/84)

TENNESSEE DEPARTMENT OF CORRECTION

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson, Gregory NUMBER: 108406

FORMAT: Problem Number and Title:

S = SUBJECTIVE O = OBJECTIVE A = ASSESSMENT P = PLAN

Date	Prob. No.	Code	
6/10/86			C/o smoke bite on fingers + c Lt.
I/M			No wounds apparent.
		A	Deferred.
		P	Observe F.U. by psych [illegible]
10/6/86			Psychiatry Inmate seen. Very difficult to interview as pt makes frequent statements which are disconnected + make only fragments of sentences. States he stopped taking Li because he was afraid it would bind in his pockets. Denies thinking he might die soon. Mood dysphoric, affect constricted to limited range. Pt denies any SI/HI. Pt denies any hallucinations. MSE & Hx are consistent with thought disorder, ? schizophrenia, paranoid type. Pt has had difficulty obtaining Li because of his refusal to cooperate with blood tests. Pt denies any complaints + medication is stable I have encouraged pt to be in contact if he is not in immediate danger + therefore I have not contacted. He states would like psychiatric today (earlier than usual). He may need to be changed antipsychotic meds. F/U 2 wks Dian Hoy

Do Not Write on Back

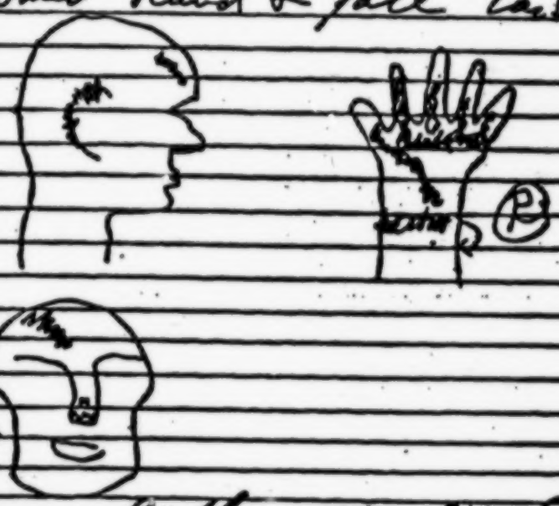
TENNESSEE DEPARTMENT OF CORRECTION

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson Gregory NUMBER: 108406

FORMAT: Problem Number and Title:

S = SUBJECTIVE O = OBJECTIVE A = ASSESSMENT P = PLAN

Date	Prob. No.	Code	
9/16/89 0700			Burned hand & face last P.M.
			
		O:	Large Bullae circling (L) wrist Post. (L) hand. Post. Five digits. None on palms.
			Smaller Bullae + Vesicle Rannie and (R) Groin. Has Full Flex-Ext of hand.
		A:	2° Burn Post (R) hand + Groin
		P	Cleaned. Silvadene + Bulky dressing. Recek x 24 hrs.
			Keep to room temp. Pt. Pt. Clayton

Do Not Write on Back

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TENNESSEE DEPARTMENT OF CORRECTION

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson, Gregory NUMBER: 108406

FORMAT: Problem Number and Title:

S = SUBJECTIVE O = OBJECTIVE A = ASSESSMENT P = PLAN

(Cont.)

Date	Prob. No.	Code	
10-31-89 9:30 AM RMSL			it was difficult to further assess his MS. He did appear to be a periodic loosening of associations, he appears oriented, though they fo difficult to fully determine. He officer on Unit reports that he has refused work as he is not strong enough, does not want to be labeled as a malingerer, and thinks he will be able to work. He reports that he has been quiet for the majority of the last three days. Allowed officer to contact Ortho surgeon, as needed and to convey their request to wear splint. Will refer to Dr. Peele on 11-1-89. — Michael Sutton, MS
11-1-89	12	S)	(Serious) compression) x 3 days)
		O)	(Serious) re-expansion noted; (thickening), nasal discharge into throat (edematous, weight)
		A)	(Decreased) Function
		P)	See Orders) — ... — Signed: [illegible]
11/1/89 4pm			PSYCHIATRY Mr Gregory is one of the most difficult men I have had to supervise. I believe he has many abilities that he is unwilling to be witnessed, but was easily accessible. He refuses to work especially when he is around together. He is not very positive about himself as a person and has a tendency to be a picker of Michael Sutton's "Broken Men." He would not be psychotic but may be, but the concern on his I still that it is the same type who he is doing received and that is why he is. He agreed a lot of Staff projects and counselors like his work and while he is he may be close to be on the unit Hearing SS a AF and agreed on medication dose if will be I will adjust to have more alone and he is alright to remain that of his need to maintain the on Friday. — Rick

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Roy Deal, M.D. 11/17
Psychiatric Consultant
Riverbend Maximum Security Institute
Mr. Greg Thompson
Unit 2
Prison #:108406

Mr. Thompson is a 30-year-old black male last interviewed by me approximately 2 weeks ago. At that time he was noted to be displaying active evidence of psychosis and mania with marked grandiosity and delusional thought content. He stated that he had written many of Michael Jackson's previous songs and was a millionaire, and a great inventor as well as a famous writer and artist. At that time he also had very pressured and rapid speech with marked tangentiality and looseness of associations. It was difficult to assess, but felt at the time he was possibly responding to auditory hallucinations and appeared to be actively psychotic. He was however making no threats of self harm or representing any aggression towards other individuals and declined to take medication voluntarily. He did not meet the criteria for involuntary medication.

On 11/15/88 he spoke to one of the nursing staff, Ms. Phyllis McEver, RN and informed her that he was willing at that time to take medication. He was ordered Trilafon 8-16 mgs. pobid as he would take it, Lithium 300mgs. pobid and Klonopin 1mg. pobid. Since that time he has refused to take the Lithium, but has taken Klonopin and Trilafon.

On our exam today he states that the medication has helped him to slow his thoughts down, begin to be able to write music once again, and his mental status was very remarkably altered. He shows no signs of eps or excessive sedation, but his speech was less pressured, less rapid, and somewhat more goal directed. He does however remain very tangential and grandiose and continues to proclaim himself as an inventor of the ethanol car as well as a song writer for Michael Jackson and numerous country-western musicians. He continues to display some irritability directed towards the other inmates and staff as well as continued obsessional thoughts of hyper-sexuality, he does however notice a decrease in these since beginning on the medication.

On interview he was also somewhat guarded about this, but did relate 2-3 episodes of severe depression in the past at which time he will become tearful and withdrawn. This states that he prefers to be "hyperactive" and did not wish to discuss the depressive periods of his life. My impression of this individual is that he most likely has a bipolar affective disorder and continues to be very grandiose and hypomanic. I do believe his active psychosis with the exception of his delusional thought content is resolving, and wish to continue him on Trilafon 8mgs. poqam, 16mgs. pohs, as well as Klonopin 1mg. poqam and 2mg. pohs. I have discontinued the Lithium since he does not wish to take this at the current time. He will be followed on a 2-3 week basis and no other changes will be made at this time.

R.W. Deal MD

(...SEE DEPARTMENT OF CORRECTIO...)

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson, Gregory NUMBER: 108406

FORMAT: Problem Number and Title:

S = SUBJECTIVE O = OBJECTIVE A = ASSESSMENT P = PLAN

Date	Prob. No.	Code	
12/7/88		S)	Psychiatry c/c initial evaluation. Nervousness. Want to be seen or sick call for more
		O)	Calm, cooperative (superficially), somewhat distractible, speech soft & non-pressured. Affect is somewhat guarded and inappropriate; he appears to fighting back tears on 2-3 occasions. He continues to be somewhat delusional and now reports that he had to fight a great war earlier this year, a war between good and evil which he won, making "everybody happy." He is still paranoid beyond delusional [illegible] some of the "people are people to work with ... but they don't treat it today ... I can't understand that." Reports feeling that the officers were "aliens" [illegible] it turns this to past, but denies that now. He does not report (and seems to deny) auditory hallucinations. That he learned the game shuffle today. He continues to experience AM of a muffled quality and will ask "a woman who has to talk to me and it hurts to talk to me." His thought is generally coherent & goal directed, he occasionally is tangential or overinclusive in [illegible]. I thought it also important to get 3 to report [illegible] [illegible] of [illegible] stuffiness which keeps him from being on a full "fighting mode."
		A)	Schizoaffective disorder, partially controlled on medication. Feeling more frustrated.
		P)	Continue current meds, add lorazepam to attempt to boost effects of [illegible] make [illegible] regulate sleep.

TENNESSEE DEPARTMENT OF CORRECTION

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson, Gregory NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
1/6/91	11:45		Psychiatry Chart reviewed, medication renewed. S. Humble MD
1/13/91			Psychiatry S) Mr. Thompson c/o chronic episodes of SOB when he does fast. Chest x-ray, EKG after 5 minutes and then go away. Physical exam shows septal deviation, left chest in CTA + wheeze, thoracic, no rales, No stridor, Heart RRR + MRG. MSE WDX 3. Discussed reasons for imprisonment and sentence and feelings of depression which he feels are related to life situation. Flat affect in general appearance well groomed and appropriately aggressive. A) Asthma, resolving vs a psychiatric problem. Probably is a stress effective, partially controlled on medication. Possible plan epinephrine. Need PE. P) Continue current medication, see q one mo. STEPHEN HUMBLE, MD S. Humble MD
1/23/91			Asthma (1) Will f/u Loryfrin to maximal aerobytic response and control pain symptoms. (2) Will consider need to taper off of PC meds on next visit if good control can be maintained for 6 more months. S. Humble, MD

Do Not Write on Back STEPHEN HUMBLE, MD CR-1884

TENNESSEE DEPARTMENT OF CORRECTION

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson Greg NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	

TREATMENT DAY 298
MEDICAL RECORD # 108406

DATE: 4/25/93
PATIENT: Thompson, Greg
MEDICATION REVIEW for 10 minutes
TREATMENT FOCI
Patient continues to do very well. During this session he recounted his psychotic symptoms that he experienced including feelings that the guards were aliens sent to destroy the earth and that snails and fish were in his cell eating his body. No such delusions remain though he at times wonders what was real. He currently has no auditory hallucinations, persecutory delusions or vegetative symptoms. Affect is mildly increased but in good control. AIMS recorded. No difficulties with medications. Continue with current doses.
MEDICATIONS
MELLARIL 100.00mg qhs

Robert Hoehn, MD

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CR-1884
(Rev. 8/90)

TENNESSEE DEPARTMENT OF CORRECTI.

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Gregory Thompson NUMBER 108406 RMSI

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
5/1/95	1:15 pm		Psych - RMSI (seen in Infirmary) Hx of BPAD, bipolar I disorder, manic, delusional, grandiose, irritable, "reality is relative", "I'm trying not to die", "I'm not that in between name", "I'll stop myself, count", "prefer happy, settle mixed, sleep ok, still thin, slowed, wt. loss, decision change, thinks a little impulsive, ↓ focus, delusion of writing most of the songs on the radio, speech ok pressured, ↓ euphoric affect, would like something to help him sleep, compliant to inpt. mood stabilizer, antipsychotic therapy
			BPP: will add Risperdal 1mg po QHS per pt. request, continue Depakote 1 mg/kg/d (@ 6 mg/kg/d) Trileptal 600 mg po BID, monitor LFTs, CBC, Depakote level currently mania & delusional, not at acute risk of harm to self or others yet
5/1/95	11:15 pm		Psych - RMSI Chart reviewed, orders signed
5/2/95	2:20 pm		Psych - RMSI chart reviewed, orders signed
5/3/95	11:15 am		Psych - RMSI Chart reviewed, orders signed
5/4/95	8:30 pm		Psych - RMSI Chart reviewed, orders signed

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884 (Rev 8/90) RDA-1458

TENNESSEE DEPARTMENT OF CORRECTION RMSI

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Gregory Thompson NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
5/7/95	7:10 pm		Psychiatry - RMSI (seen in Ad Infirmary) Hx of BPAD, manic - pt. escalating, but currently in control of his behavior, will give pt. Valium 10mg to help sleep, continue to encourage neuroleptic or mood stabilizer, watch closely for actions or delusions (Merritt MD)

CONFIDENTIAL INFORMATION
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TO ANY OTHER PARTY

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884-1684 (Rev 8/90) RDA-1458

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Gregory Thompson NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
5/6/95	4[illegible]	S.	officer CO Pt. between
4-2		O.	While the nurse [illegible] and 4-2
4208			officer Bert brought to the nurse station
RMIS			that Mr Thompson for past 2 weeks has
			"constantly" been on call light. Officer
			Bert & Cpl Grainger state that Pt.
			complains that his cell is "contaminated"
			and his cube is full of contamination
			and he wants his mattress and [illegible]
			out of room. Officers state that Pt.
			"acts up" between the hours of 4pm
			-5:30 every morning. Officer Bert states
			that Mr Thompson & the "rats are"
			and is convinced he "may go off"
		A.	Same above. Poss Psychosis
		P.	Return to Chair for review Ch. chart
			and [illegible] for orders. Tx of symptoms
		I.	Review chart and assist PRN [illegible]
		E.	Incomplete
5/22/95	9:30	S	Pt. states "he isn't crazy and never has
2 days	to		been — his problem is caused by the radio
	5:15 pm		waves and radiation from (his neighbor's) electricity
			Pt. was getting out of shower & "decontaminat-
			ing" himself. All of pt's clothing, mattress
			& bed possessions piled in front of his door to
			be "decontaminated" Pt. reports he can see static
			electricity all around his cell and that he is being
			charged by static electricity which is making him
			stronger. When I asked pt if he is hearing voices
			at present pt states "not since this writer last saw him in January"

Cont. next page

Jenny Wilds RN

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PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson, Gregory NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
5/22/95	4:30	Cont.	Pt. compared his changes of electricity to
2 days	to		that of the electric chair — "If you were in the
	5:15		electric chair you would feel the electricity go
			through you — that's what I mean about de-
			pression." Maintained eye contact during conversation
		A	Manic behaviors
		P	Contact psych for orders
		I	Discussed w pt that maybe he would feel
			better in another cell — pt refused. Also
			refused Phillasil at this time
		E	Pt agreed to wait 0 hrs this writer to talk to
			MD to see if he could be affected by electricity
			from radio. Jenny Wilds RN
5/23/95	6:00		Discussed above w Dr Powell & order received
			to admit pt to infirmary observation room and
			he will see pt this am. Restraints is
			available to move pt safely in view of his
			pt hx of being combative — Jenny Wilds RN
	6:10		Pt to bed fully clothed — equipment — WC chair, security
			of above order. Jenny Wilds RN
	8:00		Pt moved to infirmary & placed in observation
observation			cell. Flow has pants tie up & shoe
cell			strings. All verbal responses appropriate
			@ present. Positive eye contact. Constant
			movement. Requesting hygiene items &
			tobacco products. Advised to wait
			until MD arrive and could discuss
			these items. E mb. Flow verbalized understand
			and calmly walked away from desk
			Brenda Hearn

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584 (Rev 8/90) RDA-1458

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TENNESSEE DEPARTMENT OF CORRECTION 0000111

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson, Gregory NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
12/14/95	7p		Walking around cell. Good eye contact. Very quiet (at times a blank stare) mood: flat affect restricted, flat. All verbal responses appropriate. Waiting for Dr. Pruitt to come in to see Bertha Hunt
	10A		Pacing more. Took cup off door from officer. Very blank stare. Will continue to monitor. — Bertha Hunt
	11A		NAD in assessment area — Bertha Hunt
	12P		Rapidly pacing in cell. Waiting for Dr. Pruitt to come. Will continue to monitor — Bertha Hunt
	1P		Flashing light on staff in cell to gain power, flow of thoughts very rapid. Becoming agitated. Refused coffee from officers stating he no longer needs that, yet gave up to Dr. Pruitt advised it is on his way in to assess — Bertha Hunt
12/15/95	4p		Medication was given as ordered Thorazine 200 mg Dr. Pruitt Orders. Pt calm but appears to be little depressed. Will continue to monitor pt's response to meds & condition — Bertha Hunt

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1-1884 (Rev 8/90) RDA-1458

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TENNESSEE DEPARTMENT OF CORRECTION

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson, Gregory NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
12/14/95	2PM		Psychiatric - BMHI (seen in infirmary) Pt is a BF dx'd DID previously treated at Bellevue Manor DID who stopped his medication 2 days ago because it would slow him down on the unit. Pt. was noted to be more productive, more hypomanic since 4pm but has continued to refuse meds until 5pm when he agreed to take only Valium 10 mg @ night. This was given for 48 hrs. It was described this AM as becoming increasingly agitated this AM stating that he knew what his problem was; it was that for the last 5 years he had been listening to the radio for 24 hrs/day & was told to divorce his wife. Pt. was taken to the infirmary and remained calm until noon, & became progressively more agitated & paranoid seeking the lights were radiating him. Upon exam pt. was markedly agitated pacing, hyperverbal, pressured speech and demanding to talk to the MD alone with officer, locking and nothing the door when this was not done. A/P: BPD, organic - pt. to be transferred to special needs. Dr. Mayer agrees to accept with medications pt. on transfer 8 Haldol 5mg / Benadryl 50 mg / Ativan 2mg IM to de psychosis and agitation. Emergency medication form signed as pt refusing meds and in lacking capacity to make this decision as with no psychosis a danger to himself and others. Bertha Hunt, MD

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-1884 (Rev 8/90) RDA-1458

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TENNESSEE DEPARTMENT OF CORRECTION 0000170 RUSI

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson, Gregory NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
11/6/95	1500		Psychiatry - RMSP (Initial)
			33 yo B/M c Dx of BPAD Rapid Cycling. Was seen in MSU, pt. was busy when medication was offered. Noted talking to staff & other pts. on unit. Noted pressured speech, psychomotor activity. States he realizes that is something wrong with him, states he likes having fast thinking but does not want to go "over the limit", states he does not want to take Lithium every day because he has to be worried about getting stabbed in the back, agrees only to take Lithium intermittently. Will order Lithium, wants EKG results.
			A/P: Decreasing manic symptoms - agrees to take Lithium, needs Lithium level. Pt. is not at a point where he can be involuntarily medicated, will continue to observe, Tegretol d/c'd.
			(illegible)

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CR-1884
(Rev. 8/90)

ATTACHMENT

"I"

Order Form 1298/A5 (8-Copy set)
Order Form 1298/5 (8-Copy set)

0000067

PHYSICIAN'S ORDERS

NAME Thompson, Gregory
ROOM NO. (ADDRESS)
HOSP. NO. RMSI JA 208
PHYSICIAN 108406

Drug Allergies NKA

Date & Time	Another brand of drug identical in form and content may be dispensed unless checked ☐	DO NOT USE THIS SHEET UNLESS A RED NUMBER SHOWS → #	Nurse's Initials
2/2/95 1P	Give pt 2 capsules of TCN 500mg + instruct to make a paste & Otte + apply to Tongue tid X 5days (3 cups should last 5 days) Tetracycline Capsules		
	Ci Cummings 2/3/95 CLINTON CUMMINGS, M.D.		
	Rec'd on mar 2/2/95 Kathy McClemore RN		
2/7/95 4:45PM	1. Tylenol #4 ÷ PO q 4-6 hrs PRN pain x 24 hrs (Refax ☑ 2-7-95)		
	2. Pen VK 250 mg ÷ PO q 6 hr x 7 days.		
	2 Tylenol # 3 ÷ or ii q 4-6 hrs PRN pain x 24 hrs		
	3. Refer to Dental in AM C. Cummings M.D 2/7/95 CLINTON CUMMINGS, M.D.		
	Noted, Myra Nelson RN 7:10 PM		
2/10/95	① D/C Pen VK ecotrin		MAR
	② Tetracycline 250mg ÷ P.O. q 6 h x 7 days		MAR
	③ Tylenol #3 ÷ Tab p o q 4 h p.r.n. Pain x 3 days		MAR
	M. Burgess, DDS		
	Noted - MAP, Nursing Supervisor RN at 2p		

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TENNESSEE DEPARTMENT OF CORRECTION

0000047

Medication Administration Record

RMSI

Name Thompson Gregory Number 108406 Location JA208
LAST FIRST MIDDLE

Allergies NKA

Responsible Physician BOATRIGHT Month FEBRUARY Year 1995

START	STOP	MEDICATIONS
2/2/95	2/7/95	Tylenol #3 ÷ or ii PO q 4-6 hrs PRN pain x 24 hrs starting @ 8p Dr.:
2/2/95	2/9/95	Tetracycline 250 mg ÷ PO q6h x 7 days Dr.: Burgess
2/3/95	2/8/95	Cylert #3 ÷ BID PRN pain x 5 days Dr.: Burgess
2/7/95	2/12/95	Refax #4 po TID x 5 days Dr.: Boatright
		Dr.:
		Dr.:

HOUR: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

NURSES INITIALS	FULL LEGAL SIGNATURE	NURSES INITIALS	FULL LEGAL SIGNATURE	NURSES INITIALS	FULL LEGAL SIGNATURE
				NI	

R = REFUSAL
D/C = DISCONTINUED
N/S = NO SHOW
H = MEDICAL HOLD
CIRCLE BOX AND INCLUDE CODE/INITIALS

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TENN SEE DEPARTMENT OF CORRE ON 0000648

Medication Administration Record

Thompson, Greg (LAST, FIRST, MIDDLE) Number 108406 Location A-20P

Allergies

Responsible Physician Boatright/Thomas Month Feb Year 1995

START	STOP	MEDICATIONS	HOUR 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
2/8	2/11	Actifed + P.O T.I.d x 7d Dr: Boatright KM	8 2 8
		Dr.:	
		Dr.:	
		Dr.:	
		Dr.:	
		Dr.:	

NURSES INITIALS	FULL LEGAL SIGNATURE	NURSES INITIALS	FULL LEGAL SIGNATURE	NURSES INITIALS	FULL LEGAL SIGNATURE
		KM	Kathy McClemore		
KM	Kathy McClemore				

ATTACHMENT

"J"

I TALKED HERE AND SEEN NO NEED TO SEE PSYCH SERVICES WHEN MOVED TO A DIFF. POD DR TO UNIT 1. REC'D A DISC. FOR THROWING PHONE AT OFFICER &

STAFF NAME: DONALDSON, CHERYL
TITLE: CORRECTIONAL COUNSELOR
SITE: RIVERBEND MAXIMUM SECURITY INSTITUTION
NOTE DATE: 04/07/1995 TIME: 14:00:00
NOTE: SPOKE W/OFFENDER AT JAIL/INSTITUTION- SEE COMMENTS

0000798

COMMENT:
I/M IS VERY HELPFUL TO STAFF, ON DOORS WHEN HE SHOULD BE WORKING, CELL IS NEAT AND CLEAN. P/T COMM. CLEANER WHO WORKS WELL. A JOVIAL FELLOW AND NEVER COMPLAINS WHEN TOLD TO DO SOMETHING. POLITE AND HELPFUL. WORKED HARD CLEANING PREPARING FOR THE AUDIT AND THIS WAS A GREAT ASSET TO THE UNIT.

BI01MAC TOMIS DATE: 05/14/1998
RMSI CONTACT HISTORY TIME: 10:04
DONACH01 FROM: 09/05/1992 TO: 05/14/1998 PAGE: 23

OMIS ID: 00108406 THOMPSON, GREGORY
STATUS: ACTIVE SEX: M DATE OF BIRTH: 12/13/1961
RACE: BLACK

STAFF NAME: DONALDSON, CHERYL
TITLE: CORRECTIONAL COUNSELOR
SITE: RIVERBEND MAXIMUM SECURITY INSTITUTION
NOTE DATE: 04/06/1995 TIME: 14:00:00
NOTE: SPOKE W/OFFENDER AT JAIL/INSTITUTION- SEE COMMENTS

COMMENT:
I/M CAME OUT TO MAKE LEGAL CALL BUT HAD THE TELEPHONE NU. WRONG. I/M REC'D 2 DISC. ON 4/5/95-1.DISRESPECT-CALLED FEMALE OFFICER BITCH AND EXCESSIVE USE OF CALL BUTTON. I/M REPORTS HE CAN NOT SLEEP DUE TO NOIS E ON POD. I/M APPEARS TO NEED PSYCH ATTENTION BUT REFUSES. WE DISCUSSE D COURT, HOW HE USE TO ACT,TSP,PRIOR MENTAL HEALTH ISSUES.AND DIAGNOSI S,HOW HE CAN NOT CONCENTRATE TO WRITE OR DRAW. HE WANTS TO MOVE TO U/1 . RAPID RAMBLING SPEECH, FACIAL AFFECT NOT APPRO.,THINKS OTHERS TALK ABOUT HIM AND HEARING VOICES IN THE PAST. MAY NEED INTERVENTION SOON.

STAFF NAME: BRANDON, HOWARD
TITLE: INMATE RELATIONS COORDINATOR
SITE: RIVERBEND MAXIMUM SECURITY INSTITUTION
NOTE DATE: 04/03/1995 TIME: 12:45:00
NOTE: SPOKE W/OFFENDER AT JAIL/INSTITUTION- SEE COMMENTS

COMMENT:
INMATE STATED THAT THERE WAS NO PROBLEMS.

STAFF NAME: BRANDON, HOWARD
TITLE: INMATE RELATIONS COORDINATOR

STAFF NAME: DONALDSON, CHERYL
TITLE: CORRECTIONAL COUNSELOR
SITE: RIVERBEND MAXIMUM SECURITY INSTITUTION
NOTE DATE: 04/12/1995 TIME: 13:00:00
NOTE: SPOKE W/OFFENDER AT JAIL/INSTITUTION- SEE COMMENTS

0000797

COMMENT:
I/M LYING IN BED WATCHING TV. NO GROUPS BUT WOULD LIKE TO ATTEND THE SUNRISE SERVICE. ASKED ME TO CALL DENTAL DUE TO HIS TOOTH ACHE. I ADVI SED SGT. PHILLIPS TO CALL.

BI01MAC TOMIS DATE: 05/14/1998
RMSI CONTACT HISTORY TIME: 10:04
DONACH01 FROM: 09/05/1992 TO: 05/14/1998 PAGE: 24

OMIS ID: 00108406 THOMPSON, GREGORY
STATUS: ACTIVE SEX: M DATE OF BIRTH: 12/13/1961
RACE: BLACK

STAFF NAME: DONALDSON, CHERYL
TITLE: CORRECTIONAL COUNSELOR
SITE: RIVERBEND MAXIMUM SECURITY INSTITUTION
NOTE DATE: 04/12/1995 TIME: 10:00:00
NOTE: SPOKE W/OFFENDER AT JAIL/INSTITUTION- SEE COMMENTS

COMMENT:
AND LAST WK. HE VERBALLY CURSED OUT FEMALE OFFICER AND CONTINUED TO PUSH EMERG.CALL BUTTON. HIS PAST RECORD SHOWS HE CAN BE POTENTIALLY DANGEROUS-SECURITY RISK. SELF MUTILATOR W/SCARS. ON 4/6/95-HIS SPEECH WAS RAPID AND RAMBLING AND HE JUMPED FROM ONE SUBJECT TO THE NEXT,EYES ARE RED DUE TO LACK OF SLEEP AND HE WEARS DARK SUNGLASSES,ADMITS TO HE ARING AND REACTING TO VOICES IN THE PAST AND REFUSES MEDS. AND SEES NO NEED TO SEE PSYCH SERVICES. HIS FACIAL AFFECT APPEARS FLAT AND MOOD SWINGS ARE PRESENT. CAUTION NEEDS TO BE USED.

STAFF NAME: DONALDSON, CHERYL
TITLE: CORRECTIONAL COUNSELOR
SITE: RIVERBEND MAXIMUM SECURITY INSTITUTION
NOTE DATE: 04/12/1995 TIME: 09:56:00
NOTE: SPOKE W/OFFENDER AT JAIL/INSTITUTION- SEE COMMENTS

COMMENT:
PLAN TO SUBMIT CR-3431 TO MENTAL HEALTH PSYCH SERVICES TO HAVE I/M EVALUATED DUE TO HIS COMPLAINTS OF LACK OF SLEEP BECAUSE OF NOISE AND OTHERS DELIBERATELY DOING THINGS TO AGGRAVATE HIM. HE CAN NOT CONCENTR ATE AND ADMITTED TO HEARING VOICES AND REACTING TO THEM IN THE PAST.HE

ATTACHMENT

"K"

0000107

TENNESSEE DEPARTMENT OF CORRECTION

PROBLEM ORIENTED - PROGRESS RECORD

RMSI

NAME: Gregory Thompson NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
1/30/95	8pm		Psychiatry - Rm 8A (seen in Dayroom) 53 yo BM c Dx of BAD presently Tx'd c risperdal d. presents stating that he be sent to specialist needs it he gets "back again, speech more pressured, rambling, reports (a hallucinations) hard to hearing, time difficulty, denies SI/HI irritability, last A level - a week ago, states he is getting more hostile because he isn't getting any sleep, feels he still can control himself, "I'm trying to calm down", appears to have some mild paranoia, circumstantial, pressure evidence of anger & depression. AP: BAD - denies medication & hasn't strongly recommend he restart his Mellaril which controlled his agitation & psychosis, d. states he will restart mellaril when he feels he needs it & will call psychiatrist. JD Scott MD	

Do Not Write on Back

584 (Rev 8/90) RDA-1458

ATTACHMENT

"L"

TENNESSEE DEPARTMENT OF CORRECTI 0000109

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Gregory Thompson NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
[illegible]	4[illegible]	S.	officer C/O Pt. behavior
W-2		O.	While this nurse delivering med to W-2
B208			officer Bert brought to this nurse attention
RMIS			that MR Thompson for past 2 weeks has
			constantly been on call light. Officer
			Bert & Cpl Grainger state that Pt.
			complains that his cell is "contaminated"
			and his radio is full of contamination
			and he wants his mattress and Cell Bed
			out of room. Officers state that Pt.
			acts up between the hours of 4pm
			-5pm every morning. Officer Bert states
			that Mr Thompson is the "only man"
			and is convinced he "may go off"
		A.	Same above. Poss Psychosis
		P.	Return to Unit for review. Pt. chart
			and Pt. will be ordered. Tx of symptoms
		I	Review chart and assist plan of action
		E	Incomplete
12/25/95	9[illegible]	S	Pt. states "he isn't crazy and never has been — his problem is caused by the radio waves and radiation from his cell's electrical
12/26/95	[illegible]		
	5:[illegible]pm	O	Pt. was getting out of shower & "decontaminating" himself. All of pt's clothing, mattress all possessions piled in front of his door to be "decontaminated" Pt. reports he can see static electricity all around his cell and that he is being charged by static electricity which is making him stronger even though he is losing wt. Last Psych eval since this writer last saw him in January

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B-1884 (Rev 8/90) RMA-1458

NAME: Thompson, Gregory NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
12/7/95 12/8/95	4:30 to 5:15	Cont)	Pt. compared his charges of electricity to that of the electric chair - "If I put you in the electric chair you would feel the electricity go through you - that's what I mean about my body." Maintained eye contact during conversation
		A	Manic behavior.
		P	Contact psych. for orders
		I	Discussed w pt that maybe he would feel better in another cell - pt refused. Also refused Mellaril again.
		E	Pt agreed to wait Dr. Jay this writer to talk to MD & see if he could be affected by electricity from radio. — Jenny Wells DRN
12/7/95	6:30		Discussed above w Dr. Pruett & order received to admit pt to Infirmary observation, command he will see pt. Video camera security is available to move pt safely in case of his agg. act - he of being combative — Jenny Wells DRN
	6:10		Pt to Infirmary without difficulty - questioning - use of chair & security of above orders — Jenny Wells DRN
	8:00		Pt provided to Infirmary & placed in observation cell. Pt has pants tied up w shoe string. All verbal responses appropriate @ present. Positive eye contact. Constant movement. Requesting hygiene items & tobacco products. Advised to wait until MD arrive and could discuss these items w MD. Pt verbalized understanding and calmly walked away from writer — Brenda Hearn
observation cell			

Do Not Write on Back

884 (Rev 8/90) RDA-1458

NAME: Thompson, Gregory NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
12/7/95	9p		Walking around cell. Good eye contact. Hyperverbal. Jumping from topic to topic. Affect very flat. All verbal responses appropriate. Waiting for Dr. Pruett to come in to see. — Brenda Hearn
	10p		Pacing more. Took cup of water from officer. Very blunt affect. Will continue to monitor. — Brenda Hearn
	11p		No D in assessment @ present — Brenda Hearn
	12n		Rapidly pacing in cell. Waiting for Dr. Pruett to come in. Will continue to monitor — Brenda Hearn
	12p		Talking to staff in cell. Pacing rapidly. Flat affect. Movements very rapid. Becoming agitated. Refused coffee from officers at this time. Will continue to monitor. Dr. Pruett advised of this via order in the chart — Brenda Hearn
12/7/95	4p		Writer was given an update from officers that Dr. Pruett advised he is on his way to the chart — Brenda Hearn

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R-1884 (Rev 8/90) RDA-1458

TENNESSEE DEPARTMENT OF CORRECTION

PROBLEM ORIENTED - PROGRESS RECORD

NAME: Thompson, Gregory NUMBER 108406

S=SUBJECTIVE O=OBJECTIVE A=ASSESSMENT P=PLAN I=INTERVENTION E=EVALUATION

Date	Time	Prob. No.	
7/29/96	2115		Psychiatry - RMSP (seen in infirmary) 30 yo B/M of 2 Dx of BPAD previously taking Mellaril 100mg QHS who stopped his Mellaril 7d/pt ago to see if it would slow him down on the unit. Pt. was noted to become progressively more hypomanic since d/c'd last hosp. Continues to refuse meds until 7/27 when he agreed to take only Valium 10mg @ night. This was given for 2 days. Pt. was described this AM as becoming increasingly agitated, this AM stating that he knew what his problem was; it was that for the last 5 years he had been listening to the radio for 24 hrs/day & each was instructed. Pt. was taken to the infirmary and remained calm until ~ noon, & became progressively more agitated & paranoid feeling the lights were radiating him. On exam pt. was markedly agitated pacing, hyperverbal & pressured speech & demanding to talk to the MD alone in an office, locking & shutting the door which this was not done. Asst: BPAD, manic - pt. to be transferred to special needs, Dr. Mayer agrees to accept, will medicate pt. on transfer 2 Haldol 5mg/Benadryl 50mg/Ativan 2mg IM, to be psychotic & agitation. Emergency medication form signed per pt refusing meds & is lacking capacity to make this decision as well as presenting a danger to himself & others. Referred, md

Do Not Write on Back

-1684 (Rev 11/90) RDA-1458

189

ATTACHMENT

"M"

190

TENNESSEE DEPARTMENT OF CORRECTION

MENTAL HEALTH TREATMENT PLAN

Inmate: THOMPSON, GREGORY (Last, First, Middle) Number: 108406 DOB: 12/13/61 Sex: Male (DEATH ROW)

Referral Date: 5/27/95 Facility: SAND Treatment Status: INVOL Custody Status: MAX

Assigned Treatment Program: Acute Treatment Plan Formulation Date: 6/7/95.

Initial Treatment Plan: NO. or, Updated Treatment Plan: YES.

Presenting Problem: MR. THOMPSON WAS REFERRED FROM RMSI FOR HIS 1ST SAND ADMISSION. The Certificate of Mental Health Emergency Form Completed by Dr. Pruitt, RMSI Psychiatrist, Indicated Pt. Agitated, Pacing, Yelling, Expansive Paranoid Delusional Thought Content, Pressured Speech And Flight of Ideas. A mental Health Emergency was confirmed. Form dated 5/20/95 per Dr. Pruitt indicates Pt. Having Last Significant Amount of Sleep at 48 hrs as well as Presenting As Agitated And Threatening. The Form Indicates An Emergency Medication x1 IM Haldol 5 mg. DIAGNOSIS ATIVAN I.M., And Benadryl I.M. ADMISION Approved per Dr. Mayer.

Axis I: PSYCHOTIC DISORDER, N.O.S.
R/O

Axis II: Deferred.
R/O

Axis III: NO DIAGNOSIS.
R/O

Axis IV: INCARCERATION, DEATH ROW STATUS.

Axis V: CURRENT GAF: 30.
(see from Below) 61 Pt. explained that he had been given a GAF score of 30 and a "full" explanation of what that meant. He stated that he understood and had no questions. Pt. appears to be competent to refuse treatment.

Rationale for Treatment Continuation: UPON ADMISSION TO THE SAND MAX UNIT MR. THOMPSON WAS placed on MHSQ:15 MIN. MONITOR per Dr. MAYER. Per Dr. Mayer Pt. Rx the Psychotropic medication (Mellaril 200mg) that he was prescribed at RMSI. Mr. Thompson was seen By the TX TEAM on 5/30/95 At which time he denied Psychotic Symptoms. Pt. Was Non-Compliant With Medication. Since Admission Pt. Has "Threatened" staff. Pt. Has been observed Not Sleeping well and has Excess Energy. Pt. Displayed Difficulty Maintaining Focus of Attention. He denied Suicidal Ideation or Hx of Suicidal Attempts. Pt. Stated he had an attempt 10 yrs ago for a Court ordered Evaluation. Pt. Was Competent & Was Educated. He Saw His Options Were Limited. He Stated "I Need to get my mind back." Thought Restricted Unlimited Verbalizations. Pt. Was Observed Pacing Most of the Interview. He Stated "I Don't Want to be in a Trance." Dr. Mayer And Pt. Have A Good Relationship. He Stated He Wanted To Be "Drugged Up". He Stated "I Need to get my mind back." Thought Restricted Unlimited Verbalizations. Pt. Was Observed Pacing Most of the Interview. He Stated He Was Not Going To Take His Medication. Pt. Stated He Was Not Going To Take His Medication. Pt. Stated He Was Not Going To Take His Medication. Pt.

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INCORPORATED

530 S. Gay Street, Suite 900
Knoxville, Tennessee 37902

Elizabeth B. Ford
Federal Community Defender

Telephone 865-637-7979
Fax 865-637-7999

July 19, 2001

Heather Hines, Clerk
Circuit Court for Coffee County
P. O. Box 629
Manchester, TN 37349

Re: Gregory Thompson v. Ricky Bell, Warden, No. 31,213

Dear Ms. Hines:

Please find the original and two copies of the Reply to Response to Petition for Writ of *Error Coram Nobis* which I have prepared in the above matter and which I forward to you for filing. Please return a filed stamped copy in the enclosed self-addressed and prepaid envelope.

Thank you for your attention to this request. Should you have any questions, please feel free to call.

Yours very truly,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

Dana C. Hansen

Dana C. Hansen
Assistant Federal Community Defender
email: Dana_Hansen@fd.org

DCH:sas
enclosures
cc: Chris Vernon, Esq.
C. Michael Layne, Esq.

APPENDIX

"D"

IN THE FOURTEENTH JUDICIAL DISTRICT FOR THE STATE OF TENNESSEE

COFFEE COUNTY CIRCUIT COURT SITTING AT MANCHESTER

FILED

SEP 05 2001

CIRCUIT COURT
COFFEE COUNTY, TN
HEATHER MARIE DUNCAN, CLERK
TIME _____ AM/PM

GREGORY THOMPSON,

Petitioner,

vs.

RICKY BELL, Warden,

Respondent.

NO. 31,213

OPINION AND ORDER

This matter is before the Court upon the petitioner, Gregory Thompson's, request for an evidentiary hearing in support of his Petition for Writ of Error Coram Nobis. The State has alleged in its response that the petitioner is not entitled to an evidentiary hearing because his claim is barred by the statute of limitations. Based upon the petition, the State's response, and the petitioner's reply, the Court upon a summary review makes the following findings:

PROCEDURAL BACKGROUND

Gregory Thompson is presently incarcerated at the Riverbend Maximum Security Institution in Nashville, Tennessee. He has previously been tried in the Criminal Circuit Court for Coffee County, Tennessee, and was convicted of murder in the first degree on August 22, 1985. He received a sentence of death. Mr. Thompson has been in the

custody of the Tennessee Department of Corrections since his conviction. His conviction and sentence was affirmed by the Tennessee Supreme Court on February 27, 1989. A Petition for Writ of Certiorari to the United States Supreme Court was denied on June 28, 1990. Petitioner filed a Petition for Post-Conviction Relief on October 16, 1990. Among the many allegations in the Petition were that his trial counsel failed to adequately investigate the petitioner"s personal and medical history and failed to obtain and request adequate expert assistance regarding his mental competency. In addition, the petitioner's post-conviction counsel argued that Gregory Thompson was not mentally competent to be executed. Petitioner's Post-Conviction Petition was heard before the Honorable Judge William Russell in March, 1995. An Opinion and Order denying petitioner's Post-Conviction Relief was entered on May 15, 1995. The Tennessee Court of Appeals affirmed the Trial Court. On October 28, 1997, the Tennessee Supreme Court denied the appellant's application for permission to appeal. A federal habeas corpus petition was filed, denied, and is currently pending in the federal appellate system.

FINDINGS OF LAW

The petitioner argues in his Petition for Writ of Error Coram Nobis that he suffers from a long-standing mental illness which was present at the time of the crime and trial. Petitioner argues that he is entitled to the Writ and a new trial because of "newly discovered evidence" and asks for an evidentiary hearing on the same. Petitioner's argument is based upon the recent holding in *Workman vs. State, 41 S.W.3d 100 (Tenn. 2001)*. In *Workman* contrary to the State's statute of limitations argument, the Tennessee Supreme Court held that due process concerns required that Workman be afforded an evidentiary hearing on his newly discovered evidence claims. In this case the State again argues that the petitioner is not entitled to an evidentiary hearing because his claim is barred by the

statute of limitations. The State argues that petitioner's supporting affidavit of Dr. Arney is not "newly discovered evidence". In this case the alleged "newly discovered evidence" concerns an affidavit in support of a petition for the appointment of a conservator for Mr. Thompson. Specifically, on January 19, 2001, Dr. Casey C. Arney, Mr. Thompson's state provided mental health professional, submitted a sworn affidavit recommending the appointment of a conservator for Mr. Thompson. Dr. Arney stated,

> Mr. Thompson is a 38 year old gentleman with a long history of Bipolar Disorder and psychotic symptoms. He has severe symptoms of mania with racing tangential thoughts, pressured speech, in delusional grandiosity. He becomes severely agitated and hostile at times. He has assaulted staff in the recent past which appears to be related to his mental illness. It has been recommended by the treatment review committee to be treated with involuntarily medication [sic] and have a conservator assigned to him.

Petitioner argues that this statement is an "admission against interest" by the State. Petitioner has attached several mental health expert affidavits in support of his Petition, all of which had been obtained for use either at his murder trial or at his previous post-conviction trial proceedings.

The Writ of Coram Nobis is an extraordinary remedy for those who can show that newly discovered evidence relating to matters litigated at the trial may have resulted in a different judgment had it been presented at the trial, see T.C.A. 40-26-105. Due process requires that litigants be able to present their claims at a meaningful time and in a meaningful manner. *Workman, at 102.* Due process can require the tolling of the applicable statute of limitations after carefully weighing the government and private interests affected by the official action.

From a review of the file, the petitioner's mental health issue was litigated at trial and has been reviewed and re-litigated during petitioner's appeals and the post-conviction process. There has been more than one finding that the petitioner was mentally

competent. After carefully weighing the competing interests of both sides in this case and a review of Dr. Arney's affidavit and the other supporting affidavits, the defendant points to no new evidence that may have made a difference at his criminal trial. The affidavit that the petitioner alleges as newly discovered evidence is merely an affidavit supporting a petition for conservatorship filed sixteen years after his criminal trial. Unlike *Workman*, the alleged evidence claimed by the petitioner does not go to his factual innocence of the murder but to a mental health issue that has been previously explored during prior court proceedings.

CONCLUSION

Accordingly, for the aforementioned reasons, this Court finds that Mr. Thompson's Petition for Writ of Error Coram Nobis is barred by the statute of limitations. Therefore, his petition is denied without an evidentiary hearing.

ENTER: This the 5 day of September, 2001.

L. CRAIG JOHNSON
CIRCUIT COURT JUDGE, PART I

I, the undersigned Circuit Court Clerk, do hereby certify that this is a true and correct copy of the original of this instrument.
Filed this 5 day of September, 2001
Circuit Court Clerk
Circuit Court/Collier County

APPENDIX

"E"

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
July 16, 2002 Session

GREGORY THOMPSON v. RICKY BELL, WARDEN

Circuit Court for Coffee County
No. 31,213

No. M2001-02460-CCA-OT-CO

FILED
AUG 15 2002
Clerk of the Courts

JUDGMENT

Came the Appellant, Gregory Thompson, by and through counsel, and also came the Attorney General on behalf of the State, and this case was heard on the record on appeal from the Circuit Court of Coffee County; and upon consideration thereof, this Court is of the opinion that there is no reversible error in the judgment of the trial court.

It is, therefore, ordered and adjudged by this Court that the judgment of the trial court is affirmed, and the case is remanded to the Circuit Court of Coffee County for execution of the judgment of that court and for collection of costs accrued below.

Because it appears to the Court that Appellant, Gregory Thompson, is indigent, costs of the appeal will be paid by the State of Tennessee.

PER CURIAM
Thomas T. Woodall, Judge
J. Curwood Witt, Judge
Alan E. Glenn, Judge

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
July 16, 2002 Session

GREGORY THOMPSON v. RICKY BELL, WARDEN

Direct Appeal from the Circuit Court for Coffee County
No. 31,213 L. Craig Johnson, Judge

No. M2001-02460-CCA-OT-CO

FILED
AUG 15 2002
Clerk of the Courts

Appellant, Gregory Thompson, was convicted for the first degree murder of Brenda Lane. The murder occurred on January 1, 1985. The jury imposed the death penalty. Our supreme court affirmed the conviction and sentence of death. State v. Thompson, 768 S.W.2d 239 (Tenn. 1989). Appellant subsequently filed a petition for post-conviction relief. The petition was denied by the trial court, and the trial court's denial was subsequently affirmed by our Court. Thompson v. State, 958 S.W.2d 156 (Tenn. Crim. App. 1997). Later, in 2001, Appellant filed a petition for writ of error coram nobis, which the trial court dismissed without an evidentiary hearing because it was filed after expiration of the applicable one-year statute of limitations. This appeal followed. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

THOMAS T. WOODALL, J., delivered the opinion of the court, in which J. CURWOOD WITT and ALAN E. GLENN, JJ., joined.

Marjorie A. Bristol, Nashville, Tennessee, for the appellant, Gregory Thompson.

Paul G. Summers, Attorney General and Reporter; Jennifer L. Smith, Assistant Attorney General; C. Michael Layne, District Attorney General; and Chris Vernon, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In his petition for writ of error coram nobis, Appellant asserts that "new evidence" of his mental incapacity exists which would have resulted in a different judgment if the jury had been aware of the evidence at the time of his trial. Defendant bases this theory on a petition filed in the Chancery Court of Davidson County, with the State of Tennessee Department of Correction as petitioner, seeking to have a conservator appointed for Appellant. The Department of Correction asserted that the appointment of a conservator was for the limited purpose of providing consent for

Appellant to "receive medical and psychiatric treatment, including the forcible administration of medications if the conservator finds that such is necessary."

The conservatorship petition, filed by the State Attorney General representing the Department of Correction, alleged in pertinent part that Appellant was in need of protection and assistance by reason of an illness which rendered him "presently disabled." The conservatorship petition further alleged that Dr. Casey Arney, Appellant's treating psychiatrist, had diagnosed Appellant as suffering from "a long history of Bipolar Disorder and psychotic symptoms." No further quantification of the time period of Appellant's mental disability was made in the conservatorship petition.

The conservatorship petition was filed March 14, 2001, almost sixteen years after Appellant was convicted of first degree murder and sentenced to death. Dr. Arney's letter in support of the appointment of a conservator, which was sworn to in the presence of a notary public, is dated January 19, 2001.

During Appellant's trial and post-conviction proceedings, the State contested all assertions by Appellant that his mental condition was a valid defense to the crime for which he was charged, and/or that his mental condition was a mitigating factor as to the sentencing. See State v. Thompson, 768 S.W.2d 239, 248-49 (Tenn. 1989); Thompson v. State, 958 S.W.2d 156, 164-65 (Tenn. Crim. App. 1997). In the opinion of this Court in the post-conviction case, our Court noted that Appellant was diagnosed with "bipolar disorder, schizo affective disorder or schizophrenia" *since his incarceration* for the murder of Brenda Lane. Thompson, 958 S.W.2d at 164. Although Appellant, in his petition and in his brief on appeal, renews allegations of ineffective assistance of counsel at trial, the crux of his argument in the present coram nobis petition is based on a claim that the State has since reversed its position and now agrees that Appellant has a debilitating mental illness.

The purported "new evidence" in this case, which consists of Dr. Arney's sworn letter supporting the appointment of a conservator, does not support Appellant's assertion that he was suffering from any mental disability at the time of the criminal offense for which he was convicted or at the time of his trial. Likewise, the Department of Correction's petition for appointment of a conservator does not, in and of itself, constitute "evidence," new or old. Hillhaven Corp. v. State ex rel. Manor Care, Inc., 565 S.W.2d 210, 212 (Tenn.1978) (allegations in pleadings do not constitute evidence of the facts averred); State v. Dykes, 803 S.W.2d 150, 255 (Tenn. Crim. App. 1990). Neither does the conservatorship petition constitute a concession by the State Attorney General that Appellant was mentally disabled at the time of the criminal offense or at the time of Appellant's trial.

The relief by petition for writ of error coram nobis is provided for in Tennessee Code Annotated section 40-26-105. As previously noted by our Court, "[t]he purpose of this remedy 'is to bring to the attention of the [trial] court some fact unknown to the court, which if known would have resulted in a different judgment.'" State v. Hart, 911 S.W.2d 371, 374 (Tenn. Crim. App. 1995) (quoting State ex rel. Carlson v. State, 407 S.W.2d 165, 167 (Tenn. 1996)).

Tennessee Code Annotated section 27-7-103 provides a statute of limitations of one year after the judgment becomes final for filing a petition for writ of error coram nobis. In State v. Mixon, 983 S.W.2d 661 (Tenn. 1999), our supreme court clarified that the petition must be filed within one year of the date that the judgment became final in the *trial* court. Id. at 670. A judgment is final in the trial court thirty days after entry of the judgment if no post-trial motions are filed, and, if a post-trial motion is filed, the judgment is final upon entry of an order disposing of the post-trial motion. Id.

There is no question that Appellant's petition for writ of error coram nobis was filed outside of the applicable statute of limitations. It was filed more than fifteen years after the judgment became final in the trial court. However, in Workman v. State, 41 S.W.3d 100 (Tenn. 2001), our supreme court held that the constitutional rights of due process may require tolling of the statute of limitations in a proceeding where a petition for writ of error coram nobis has been filed. Id. at 103. Workman involved a capital case wherein the petitioner argued that certain late-discovered evidence, i.e., a previously unavailable x-ray and the recanted testimony of a crucial witness, would show that he was actually innocent of the crime for which he was convicted. In State v. Ratliff, 71 S.W.3d 291 (Tenn. Crim. App. 2001), our Court applied the holding in Workman to a conviction in a non-capital case. The defendant in Ratliff was convicted of rape of a child and sentenced to serve twenty-four years in the Department of Correction. The judgment became final on December 7, 1998. He filed a petition for writ of error coram nobis on December 21, 1999, fourteen days outside of the applicable statute of limitations. The "new evidence" was alleged to be a total recantation of the testimony by the victim. Our court noted that the great weight of evidence against the defendant came from the testimony of the victim at trial. In November 1999, within the statute of limitations, the victim and her mother had contacted the prosecutor's office to discuss the fact that the victim had given false testimony at defendant's trial. Our Court held that, under the circumstances presented in Ratliff, due process precluded a summary dismissal of the petition for writ of error coram nobis based upon the expiration of the statute of limitations. Id. at 298.

The case sub judice is distinguishable from both Workman and Ratliff. First of all, the "newly discovered evidence" asserted by Appellant in this case does not purport to show his "actual innocence" of the crime for which he was convicted. Nor does it constitute mitigating evidence regarding his sentence. As noted above, assertions by a party in a pleading are not "evidence." Furthermore, Dr. Arney's letter, written more than fifteen years after the commission of the criminal offense, does not even assert that Appellant had any mental illness at the time of the commission of the offense. Finally, as reflected in this court's opinion in Appellant's post-conviction proceeding, there was evidence, at least as early at 1995, that Appellant's mental illness developed subsequent to his incarceration.

The crux of Appellant's petition is that he should be granted a hearing because the State of Tennessee, throughout the trial proceedings and direct appeals thereof, and throughout the post-conviction proceedings, successfully argued that Appellant did not have a mental illness which would constitute a defense to the crime or a mitigating factor for sentencing. Appellant argues that the State now concedes that Appellant has a mental illness. The only conclusion that can be

logically drawn from the conservatorship petition, however, is that the State Attorney General, representing the Department of Correction, asserts that Appellant was in need of a conservator for the limited purpose of giving consent to medical and psychiatric treatment in March 2001. This does not constitute "newly discovered evidence" within the parameters for relief provided by the writ of error coram nobis; neither does due process require a tolling of the applicable statute of limitations. The judgment of the trial court is therefore affirmed.

CONCLUSION

For the foregoing reasons, we AFFIRM the judgment of the trial court.

Thomas T. Woodall
THOMAS T. WOODALL, JUDGE

APPENDIX

"F"

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

GREGORY THOMPSON v. RICKY BELL, WARDEN

Circuit Court for Coffee County
No. 31,213

No. M2001-02460-SC-R11-CO

FILED
DEC 23 2002
Clerk of the Courts
Rec'd By

ORDER

Upon consideration of the application for permission to appeal of Gregory Thompson and the record before us, the application is denied.

PER CURIAM

APPENDIX

"G"

Case No: 00-5516
UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ORDER

FILED

JUN 22 2001

LEONARD GREEN, Clerk

GREGORY THOMPSON

Petitioner - Appellant

v.

RICKY BELL, Warden

Respondent - Appellee

Upon consideration of the appellant's motion to hold the proceedings in abeyance pending resolution of a related state court case,

And further considering the response in opposition thereto,

It is ORDERED that the motion be and it hereby is DENIED.

ENTERED BY ORDER OF THE COURT

Leonard Green

Leonard Green, Clerk

APPENDIX

"H"

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GREGORY THOMPSON,	)	
	)	
Petitioner-Appellant	)	
	)	
v.	)	No. 2:00-5516
	)	
RICKY BELL, Warden	)	
	)	
Respondent-Appellee	)	

NOTICE OF FILING

COMES NOW, Petitioner-Appellant Gregory Thompson, through undersigned counsel and gives notice that of the State of Tennessee's most recent position regarding Mr. Thompson's mental state. On June 26, 2001, the State of Tennessee denied a request for medical records made by Mr. Thompson's counsel. The basis for the denial of records is the release form which accompanied the request. The State of Tennessee's position is that the release form signed by Mr. Thompson is invalid in light of the appointment of a conservator. *See* Attachment A, letter from Kelly Baker. The State's contention that Mr. Thompson's mental state is so depreciated as to render a signed release form for medical records invalid supports the mental heath claims Mr. Thompson has raised before the

Court.

WHEREFORE, Mr. Thompson respectfully requests the Court to take notice of the State's most recent comment on Mr. Thompson's mental state.

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

By Dana C. Hansen
Dana C. Hansen
Assistant Federal Community Defender
530 S. Gay St., Suite 900
Knoxville, TN 37902
(865) 637-7979
B.P.R. #19098

CERTIFICATE OF SERVICE

I, Dana C. Hansen, hereby certify that a true and correct copy of the foregoing document was mailed to:

Glen R. Pruden, Esquire
Office of Attorney General and Reporter
Criminal Justice Division
425 Fifth Avenue North
Cordell Hull Building, Second Floor
Nashville, TN 37243-0493

Jennifer L. Smith, Esquire
Office of Attorney General and Reporter
Criminal Justice Division
425 Fifth Avenue North
Cordell Hull Building, Second Floor
Nashville, TN 37243-0493

this the 2 day of July, 2001, by postage prepaid delivery.

Dana C. Hansen
Dana C. Hansen

{3}

ATTACHMENT

"A"

RECEIVED

'01 JUN 29 AM 10 15

OF EASTERN TENNESSEE

STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
6TH FLOOR RACHEL JACKSON BLDG.
320 SIXTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243-0465

June 26, 2001

Michael R. Chavis
Investigator
Federal Defender Services
of Eastern Tennessee, Inc.
530 South Gay Street, Suite 900
Knoxville, Tennessee 37902

RE: Gregory Thompson, #108406
Public Records Request

Dear Mr. Chavis:

This letter is in response to your request for access to any and all files in my department's possession pertaining to Mr. Gregory Thompson.

On June 8, 2001, I spoke to Dana Hanson, an attorney in your office, and she clarified that your public records request addressed to my attention dated June 1, 2001, was directed specifically at any and all files in the Tennessee Department of Correction, Legal Division's possession pertaining to Mr. Thompson.

I have determined that three separate files exist in the Tennessee Department of Correction Legal Division pertaining to Mr. Thompson. The files are as follows:

1. Correspondence file regarding Gregory Thompson maintained by Debra Inglis, General Counsel
2. Deathrow Tracking file maintained by Bill Hutcherson, Staff Counsel
3. Conservatorship file maintained by Kelley Baker, Staff Counsel

You requested that our office set forth any itemized list of withheld materials along with our authority to withhold such materials. Following please find a list of all materials withheld:

1. Correspondence File - Medical information prepared in response to complaint allegations constitutes attorney work product.
2. Correspondence File - Memorandum from Mark A. Hudson, Senior Counsel, Office of the Attorney General, to Debra K. Inglis, Chief General Counsel, Tennessee Department of Correction dated April 5, 1999, constitutes attorney work product.
3. Correspondence File - Medical information pertaining to two other inmates redacted pursuant to T.C.A. § 10-7-504(a)(1).
4. Conservatorship File - Physician's evaluation prepared by Dr. Casey Arney dated January 19, 2001 - filed with Davidson County Chancery Court Part II under seal, Docket No. 01-1041-II.
5. Conservatorship File - Tennessee Department of Correction Mental Health Treatment Review Committee Report dated January 8, 2001 - filed with Davidson County Chancery Court Part II under seal, Docket No. 01-1041-II.
6. Conservatorship File - Tennessee Department of Correction Mental Health Treatment Review Committee Report dated November 20, 2001 - confidential medical record pursuant to T.C.A. 10-7-504(a)(1).

Furthermore, please note that pursuant to the court order appointing Sherry Goodwin as conservator for Mr. Thompson, we cannot accept an authorization signed by Mr. Thompson for release of his mental or medical healthcare information. Any such release must be signed by Ms. Goodwin.

The cost of copying the files which are available for your inspection pursuant to the Tennessee Public Records Act is twenty cents per page for a total of $38.20 an invoice is enclosed. Such files will be copied upon receipt of payment. Additionally, please provide a mailing address for delivery of such records.

Sincerely,

Kelley Blevins Baker
Staff Counsel

Enclosure: Invoice

APPENDIX

"I"

Case No: 00-5516

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

FILED
MAR 2 4 2003
LEONARD GREEN, Clerk

GREGORY THOMPSON
Petitioner - Appellant

v.

RICKY BELL, Warden
Respondent - Appellee

BEFORE: SUHRHEINRICH, MOORE and CLAY, Circuit Judges

Upon consideration of appellant's motion to stay mandate,

It is ORDERED that the mandate be stayed to allow appellant time to file a petition for a writ of certiorari, and thereafter until the Supreme Court disposes of the case, but shall promptly issue if the petition is not filed within ninety days from the date of final judgment by this court.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

APPENDIX

"J"

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

IN RE: GREGORY THOMPSON) COFFEE COUNTY
) ORIGINAL APPEAL NO.
) M1987-00027-SC-MWR-DD

MOTION TO SET EXECUTION DATE

Pursuant to Rule 12.4(A), Rules of the Supreme Court of Tennessee, the State of Tennessee respectfully requests that the Court set an execution date for Gregory Thompson. In support of this motion, the State relies on the following:

1. Thompson was convicted in 1985 by a Coffee County jury of first degree murder and sentenced to death. This Court affirmed the judgment, *State v. Thompson*, 768 S.W.2d 239 (Tenn. 1989), and the United States Supreme Court denied a petition for a writ of certiorari. *Thompson v. Tennessee*, 497 U.S. 1031 (1990).

2. In 1990, Thompson sought post-conviction relief in the trial court, which conducted a hearing, made findings, and denied relief. The judgment was affirmed in *Thompson v. State*, 958 S.W.2d 156 (Tenn. Crim. App. 1997) (app. denied Oct. 20, 1997).

3. In 1998, Thompson filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Tennessee. The district court granted summary judgment in favor of the warden and dismissed the petition. The

United States Court of Appeals for the Sixth Circuit affirmed the district court's judgment. *Thompson v. Bell*, 315 F.3d 566 (6th Cir. 2003)(reh. denied Mar. 12, 2003). The United States Supreme Court denied a petition for writ of certiorari on December 1, 2003. *Thompson v. Bell*, 540 U.S. __, 124 S.Ct. 804 (2003) (No. 03-5759), and denied a petition for rehearing on January 20, 2004. *Thompson v. Bell*, __ S.Ct. __, 2004 WL 76656 (2004).

4. Thompson has completed the standard three-tier appeals process, making the setting of an execution date appropriate. *See* Rule 12.4(A). The State therefore requests that an execution date be set no later than thirty (30) from entry of the Court's order pursuant to Rule 12.4(E) ("The Court shall set the date of execution no less then thirty (30) days from the date of the order granting the State's motion.").

For the reasons stated, a new execution date should be set.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

JENNIFER L. SMITH
Senior Counsel
Attorney of Record
P.O. Box 20207
Nashville, Tennessee 37202-0207
Phone: (615) 741-3487
Fax: (615) 532-7791
Email: jennifer.lynn.smith@state.tn.us
B.P.R. No. 16514

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been forwarded via Facsimile and First-Class U.S. mail, postage prepaid on this the 21st day of January 2004 to:

Dana C. Hansen Chavis
Federal Defender Services
of Eastern Tennessee, Inc.
530 South Gay Street, Suite 900
Knoxville, TN 37902
Phone: (865) 637-7979
FAX: (865) 637-7999

The undersigned attorney of record prefers to be notified of any orders or opinions of the Court by Facsimile at (615) 532-1971.

Jennifer L Smith

JENNIFER L. SMITH
Senior Counsel

cc: C. Michael Layne
District Attorney General
14th Judicial District
307 S. Woodland St.
P.O. Box 147
Manchester, TN 37439-0147

APPENDIX

"K"

No. 00-5516

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GREGORY THOMPSON,	)
	)
Petitioner-Appellant,	)
	)
v.	)
	)
RICKY BELL, Warden,	)
	)
Respondent-Appellee.	)

MOTION TO RECONSIDER APPOINTMENT ORDER

Respondent-Appellee, Ricky Bell, requests that this Court reconsider its order filed July 26, 2002, granting petitioner's *ex parte* motion for authorization to expand the appointment of counsel to include state court proceedings. In support of this motion, respondent states as follows:

1. On July 26, 2002, this Court entered an order granting a motion by petitioner's counsel, Federal Defender Services of Eastern Tennessee, Inc., to expand its appointment to include state court proceedings. (Copy attached as Appendix A) Because petitioner's counsel filed the motion *ex parte*, without proper service upon respondent as required under Fed. R. App. P. 25(b) ("Unless a

rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review"), respondent's counsel did not have an opportunity, prior to entry of the order, to file a response in opposition to petitioner's motion.

2. On June 16, 2003, this Court, sitting *en banc* in *Paul Gregory House v. Ricky Bell*, No. 00-6136, entered an order addressing the propriety of expanding the appointment of Federal Defender Services of Eastern Tennessee, Inc. to include representation of Paul Gregory House in state court proceedings.[1] In *House*, as in this case, Federal Defender Services sought to have its appointment expanded, and thus paid by the federal government, for state court representation.

3. After reviewing the pertinent authority regarding the scope of appointments under Section 848(q)(4)(B), including decisions of the Fifth, Eighth and Eleventh Circuit Courts of Appeal, this Court held, "[w]e agree with our sister circuits that Section 848(q)(4)(B) must be construed narrowly and agree with their conclusion that the *statute does not authorize federal compensation for representation in state proceedings*." (emphasis added) The Court thus concluded:

---

[1]Respondent notes that the motion in *House v. Bell*, No. 00-6136, was also filed *ex parte* without proper service upon respondent's counsel as required under Fed. R. App. P. 25.

> The rule is simple. The two representations shall not mix. The state shall be responsible for state proceedings, and the federal government shall be responsible for federal proceedings. As the weight of authority does not support House's request to have Federal Defender represent him in the state court proceedings at the expense of the federal government, House's motion to expand Federal Defender's representation beyond its federal court responsibilities is denied.

See Order, *House v. Bell*, No. 00-6136, at p. 4 (Copy attached as Appendix B).

4. Under this Court's decision in *House, supra*, expansion of Federal Defender Service's representation in this case to include state conservatorship proceedings is not authorized by federal statute, and the Court's July 26, 2003, order to the contrary should be reconsidered. Moreover, the state courts have already appointed both an attorney (Beth Boone, Esq. of Willis and Knight Law Firm in Nashville, Tennessee) and a conservator (Frank R. Freeman, Esq. of Nashville, Tennessee) at state expense to represent petitioner's interests in the conservatorship proceedings. Thus, expansion of the federal appointment to Tennessee state proceedings is not only improper under federal law, but unnecessary.

WHEREFORE, respondent requests, in light of the June 16, 2003, order of the *en banc* Court in *House v. Bell*, No. 00-6136, that the Court reconsider its previous order expanding the appointment of Federal Defender Services of Eastern Tennessee, Inc., to include state court conservatorship proceedings involving the

petitioner, Gregory Thompson.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General & Reporter

JENNIFER L. SMITH
Senior Counsel
Criminal Justice Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-3487
B.P.R. No. 16514

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent by first-class mail, postage prepaid to Dana C. Hansen, Assistant Federal Public Defender, 530 S. Gay Street, Suite 900, Knoxville, TN 37902, on the 19th day of August, 2003.

JENNIFER L. SMITH
Senior Counsel

No. 00-5516

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GREGORY THOMPSON,)
)
Petitioner-Appellant,)
)
v.)
)
RICKY BELL, Warden,)
)
Respondent-Appellee.)

APPENDIX A

Case No: 00-5516

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

COPY

ORDER

FILED

JUL 2 6 2002

LEONARD GREEN, Clerk

GREGORY THOMPSON

Petitioner - Appellant

v.

RICKY BELL, Warden

Respondent - Appellee

Upon consideration of the ex parte motion filed by counsel for authorization to expand the appointment to include state court proceedings,

It is ORDERED that the motion be and it hereby is GRANTED.

ENTERED BY ORDER OF THE COURT

Leonard Green

Leonard Green, Clerk

No. 00-5516

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GREGORY THOMPSON,	)
	)
Petitioner-Appellant,	)
	)
v.	)
	)
RICKY BELL, Warden,	)
	)
Respondent-Appellee.	)

APPENDIX B

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

ELECTRONIC CITATION: 2003 FED App. 0196P (6th Cir.)
File Name: 03a0196p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

PAUL GREGORY HOUSE, *Petitioner-Appellant,* v. RICKY BELL, Warden, *Respondent-Appellee.*	No. 00-6136

Filed: June 16, 2003

Before: MARTIN, Chief Circuit Judge; MERRITT, BOGGS, NORRIS, SILER, BATCHELDER, DAUGHTREY, MOORE, COLE, CLAY, and GILMAN, Circuit Judges.

ORDER

BOYCE F. MARTIN, JR., Chief Circuit Judge. Paul Gregory House, who has been sentenced to death, requests an order authorizing Federal Defender Services of Eastern Tennessee, Inc., to represent him in pending state court proceedings. Federal Defender was appointed to represent House in his federal habeas corpus proceeding in the United States District Court for the Eastern District of Tennessee pursuant to 21 U.S.C. § 848(q). This court has yet to issue a final *en banc* decision, as we are awaiting a ruling from the

Tennessee Supreme Court on three certified questions. A writ of certiorari is also pending before the Supreme Court of the United States. Nevertheless, House has initiated litigation in order to obtain relief in the state courts of Tennessee on claims of ineffective assistance of counsel, withholding exculpatory evidence, and misconduct by the police and the prosecutor. House seeks to have Federal Defender's appointment expanded and therefore paid by the federal government for the state court representation. After review the applicable case law from our sister circuits, we find that Section 848(q) does not authorize the expanded appointment. Accordingly the motion is denied.

As the facts surrounding House's conviction were fully discussed in our prior opinion, *House v. Bell*, 311 F.3d 767, 769-71 (6th Cir. 2002), we will not reiterate them here. The sole question before us concerns whether Section 848(q) will allow Federal Defender to be compensated for any state work. Section 848(q)(4)(B) authorizes the appointment of counsel for any indigent defendant in any post conviction proceedings under 28 U.S.C. § 2254 (seeking to vacate or set aside a state death sentence), as well as for federal death sentences under 28 U.S.C. § 2255. The statute also provides that a defendant is entitled to "the furnishings of such other services in accordance with paragraphs (5), (6), (7), (8), and (9)." 21 U.S.C. § 848(q)(4)(B). Section 848(q)(8) provides that appointed attorneys:

> shall represent the defendant throughout every subsequent stage of available judicial proceedings, including the pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

PUBLISHER'S NOTE:

PAGE(S) 233-234 MISSING IN ORIGINAL DOCUMENT

APPENDIX

"L"

Case No: 00-5516

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ORDER

FILED

JUL 26 2002

LEONARD GREEN, Clerk

GREGORY THOMPSON

Petitioner - Appellant

v.

RICKY BELL, Warden

Respondent - Appellee

Upon consideration of the ex parte motion filed by counsel for authorization to expand the appointment to include state court proceedings,

It is ORDERED that the motion be and it hereby is GRANTED.

ENTERED BY ORDER OF THE COURT

Leonard Green

Leonard Green, Clerk

APPENDIX

"M"

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GREGORY THOMPSON,	)	
	)	
Petitioner-Appellant	)	
	)	
v.	)	No. 2:00-5516
	)	DEATH PENALTY CASE
RICKY BELL, Warden	)	
	)	
Respondent-Appellee	)	

RESPONSE TO RESPONDENT'S MOTION TO RECONSIDER APPOINTMENT ORDER

COMES NOW Petitioner-Appellant, Gregory Thompson, through undersigned counsel and submits the following response to Respondent's motion to reconsider appointment order.

BACKGROUND

This Court will remember that it issued an order expanding Federal Defender Services of Eastern Tennessee, Inc.'s (FDSET) representation of Mr. Thompson to include state court proceedings. State court litigation was initiated by FDSET in order to obtain public records and medical records of Mr. Thompson from the prison which the State would not provide and which could not be

otherwise obtained.[1] Suit was also filed to challenge the State's appointment of a conservator to Mr. Thompson for the purpose of forcibly medicating him.[2] These issues were spawned from and are directly related to his federal habeas corpus proceedings and any upcoming proceedings under *Ford v. Wainwright*.

INTRODUCTION

This Court's order of July 26, 2002, should not be disturbed and the instant motion should be denied because (1) the State lacks standing to interfere in the administration of undersigned counsel (2) the State's motion lacks legal authority because it was untimely filed and relies solely upon a non-final order of this Court (3) the State's motion lacks moral authority because it is designed to deny counsel to Mr. Thompson and is advanced in bad faith (4) FDSET's representation of Mr. Thompson in state court is proper because the state court proceeding is ancillary to federal court proceedings, and (5) with this Court's permission, which has already been granted, Federal Defender Services of Eastern Tennessee, Inc. is authorized to represent Mr. Thompson in the state court proceeding.

---

[1]These proceedings are concluded.

[2]This proceeding is pending.

I. THE STATE LACKS STANDING TO PREVENT COUNSEL FROM REPRESENTING MR. THOMPSON

The motion to reconsider should be denied because the State does not have standing to interfere with Mr. Thompson's representation. FDSET was originally appointed to represent Mr. Thompson by the District Court for the Eastern District of Tennessee pursuant to 21 U.S.C. § 848(q)(4)(B). As this Court is aware, FDSET is a non-profit organization which operates under a grant and conditions from the Judicial Conference via the Administrative Office of the United States Courts. FDSET is a community defender organization, as opposed to a federal public defender office, and its employees are not federal government employees.[3] FDSET operates under the umbrella of the Defender Services Division of the Administrative Office of the United States Courts. The appointment of FDSET is guided by the Criminal Justice Act and the Administrative Office and is approved by this Court and Federal District Courts for the Eastern District of Tennessee. The appointment and administration of counsel is a matter between the Administrative Office, the federal courts and appointed counsel.

The State of Tennessee has neither authority nor standing to interfere in the

[3]Because FDSET employees are not federal employees, the Code of Conduct for Federal Public Defender Employees regarding outside employment is inapplicable.

administration of counsel under the Criminal Justice Act.[4] It is inappropriate for the Attorney General's office to interfere in this matter. *West v. Atkins*, 487 U.S. 42, 50 (1988)(the state government is constitutionally required to respect the independence of criminal defense counsel); *Sullivan v. United States*, 21 F.3d 198, 202 (7th Cir. 1994)(the actions of the federal defender in her capacity as counsel for a client are beyond the control of the federal government). For these reasons, the State's most recent attempt to interfere with Mr. Thompson's representation should not be sanctioned. The motion to reconsider should be denied.

II. THE STATE'S MOTION LACKS LEGAL AUTHORITY TO PREVENT FDSET FROM REPRESENTING MR. THOMPSON IN STATE COURT PROCEEDINGS

The motion to reconsider should be denied because it is out of time and is based solely upon a non-final order of this Court. 6 Cir. R. 45(b) allows reconsideration of an order within ten (10) days of service of notice of the entry of such order. The instant motion to reconsider was filed 390 days after the order

[4]The Attorney General's Office for the State of Tennessee is not a ward of federal taxpayer money. The Attorney General's Office may have an interest in how state taxpayer money is allocated and apparently is advocating that counsel for Mr. Thompson in the current state court proceeding should be paid from state funds. However, in making this implicit suggestion, the Attorney General's Office fails to alert the Court that it has vigorously opposed not only FDSET's representation of Mr. Thompson but also state counsel's representation of Mr. Thompson. The state's relentless attempts to deprive Mr. Thompson of counsel in state proceedings are detailed *infra* at section III.

expanding FDSET's representation to include state court proceedings was entered and 54 days after the order in *House*, on which the State bases its motion, was filed. Clearly the State's untimely motion is not authorized under the rules of this Court.

Furthermore, the only authority cited by the State is the July 16, 2003, order of this Court in *House v. Bell*, No. 00-6136. The order in *House*, however, is not mandatory authority. First, the order in *House* is not yet final. The State is well aware that Mr. House has filed a motion to stay the effect of that order and has requested the Court to rehear the representation issue. This motion remains pending.

Second, the *House* case is distinguishable on its face and on its facts from Mr. Thompson's case. Importantly, unlike in *House*, this Court has already expanded FDSET's appointment to include representation of Mr. Thompson in state court. This Court has determined that FDSET's appearance in state court is reasonably necessary to provide Mr. Thompson with legal representation and to carry out the requirements of FDSET's representation of Mr. Thompson. Because the recent order in *House* does not dictate the results in Mr. Thompson's case, the motion to reconsider should be denied.

III. THE STATE'S MOTION LACKS MORAL AUTHORITY TO DEPRIVE MR. THOMPSON OF HIS ATTORNEYS

The motion to reconsider should be denied because it is designed to deny counsel to Mr. Thompson and is advanced in bad faith. This motion cannot be considered in a vacuum.[5] From the inception of the State's legal proceedings against Mr. Thompson in state court the State has fought to deprive him of an attorney. The instant motion is just another attempt to revive its failed efforts.

A. The State deprived Mr. Thompson of an attorney when it sought a conservatorship for the purpose of forcing medication upon him.

On April 3, 2001, the State filed a motion for appointment of a conservator for the purpose of forcibly medicating Mr. Thompson. Despite being aware that Mr. Thompson was represented by FDSET, the State failed to serve a copy of this motion on FDSET counsel or provide notice of the conservatorship hearing. The state court appointed a conservator to Mr. Thompson. Attachment A, order appointing conservator. The conservatorship order deprives Mr. Thompson of the right to make decisions regarding his medical treatment and medications and vests the conservator with the power to consent to forcible medication of Mr.

---

[5]For a recap of the state proceedings where the State repeatedly attempted to remove Mr. Thompson's counsel from the proceedings *see* Attachment B, Reply to Response toMotion to alter or amend 8/22/02.

Thompson.

B. **The State sought to prevent Mr. Thompson's FDSET attorney from litigating the proceeding seeking to terminate the conservatorship.**

After undersigned counsel learned of the order appointing a conservator and conducted an investigation, a motion to terminate the conservatorship was filed. The State sought to strike the pleadings filed by Mr. Thompson's counsel (FDSET) and disqualify FDSET counsel from participating in the state court proceedings. On July 2, 2002, the State filed a motion to preclude the appearance of undersigned counsel asserting that such appearance constitutes the "unauthorized practice of law". Attachment C, Motion to Preclude and Memorandum in Support of Motion to Preclude)

C. **The State sought to prevent state defense attorneys from representing Mr. Thompson at the proceeding seeking to terminate the conservatorship.**

In reaction to the entry of appearance by state counsel on behalf of Mr. Thompson in the conservatorship proceeding, the State tried to prevent state counsel from representing Mr. Thompson. Attachment D, transcript pp. 12-26 Hearing 1/25/02). When the Commission overseeing state counsel stepped in to meet this challenge, the State also fought the appearance of counsel on behalf of the commission. (Attachment D, transcript p. 25, Hearing 1/25/02). The State

argued Mr. Thompson was not entitled to an attorney – period. Attachment D, transcript Hearing 1/25/02, pp. 14-15, 26. The State later argued Mr. Thompson did not need his own attorney because there was a conservator and attorney *ad litem* involved in the case. Attachment E, transcript Hearing 8/28/02).

D. **The State sought to prevent Mr. Thompson's court-appointed attorney *ad litem* from receiving full compensation for her representation of Mr. Thompson during the proceedings to terminate the conservatorship.**

At the same time the State was asserting that Mr. Thompson was amply represented by both the conservator and attorney *ad litem*, the State also sought to deny compensation to the attorney *ad litem*. *See* Attachment F, transcript Hearing 6/28/02 pp. 4-13. When the state court granted the attorney *ad litem's* fee motion the State filed an appeal. (Attachment G, Notice of Appeal)

E. **The State's attempts to deny Mr. Thompson an attorney were rejected by the State probate court.**

The state court disagreed with the State's position and permitted state counsel to represent Mr. Thompson.[6] The state court specifically found that Mr. Thompson was entitled to the protection and assistance of his criminal defense lawyers in the conservatorship proceeding. Attachment D, transcript p. 87-91,

[6]The issue regarding FDSET's representation of Mr. Thompson was pretermitted by this Court order authorizing FDSET's representation. *See* Attachment H, state's motion to withdraw motion to preclude 8/6/02.

Hearing 1/25/02.

F. The State's attempts to deny Mr. Thompson an attorney were also rejected by the Tennessee Court of Criminal Appeals.

During this time, state counsel was unable to continue in the termination proceeding and appellate litigation of a separate, but related, state court proceeding. When undersigned counsel entered an appearance in that proceeding, the State filed another motion to preclude FDSET's appearance. Attachment I, motion to preclude 7/9/02. The Tennessee Court of Criminal Appeals denied the State's motion. Attachment J, *Thompson v. Bell*, No. M2001-02460-CCA-OT-CO (Tenn.Crim.App. Order 7/16/02).

G. This most recent attempt to deny Mr. Thompson of the protection and assistance of his lawyers should also be thwarted.

On July 26, 2002, this Court expanded the scope of FDSET's representation of Mr. Thompson to include state court proceedings. The only state court proceeding which remains pending is that seeking to terminate the conservatorship. Undersigned has continued to represent Mr. Thompson's interests in that proceeding and has advocated the termination of the conservatorship with its forced medication provision. Because the State has no legitimate interest in preventing Mr. Thompson from receiving protection and assistance from the lawyers who have represented him since 1998, and for all

other reasons set forth herein, the motion to reconsider should be denied.

IV. FDSET'S REPRESENTATION OF MR. THOMSON IS PROPER BECAUSE THE STATE COURT PROCEEDING DIRECTLY RELATES TO FEDERAL COURT PROCEEDINGS

The conservatorship providing for forced medication of Mr. Thompson was spawned from his federal habeas proceedings and is directly related to future federal proceedings, including proceedings under *Ford v. Wainwright*.

A. Mr. Thompson's habeas petition raised his mental state as grounds for relief.

The habeas claims of continued relevance are Claim 22, the ineffective assistance of counsel for failing to conduct a mental health investigation and present mitigating evidence of Mr. Thompson's compromised mental state at the time of the crime and Claim 37, Mr. Thompson is incompetent to be executed and Claim 41, the state misconduct claim. With respect to the *Ford* claim, the district court dismissed it without prejudice for reasons of ripeness because an execution date had not been scheduled. (Attachment K, Memorandum 2/17/00 p. 101-102). Therefore, at a minimum, the *Ford* issue will be raised and litigated in future proceedings.

B. Mr. Thompson's competence was an issue during district court proceedings.

On February 12, 1999, counsel filed a motion with the district court seeking

injunctive relief and an order finding Mr. Thompson incompetent to proceed and tolling of the proceedings. The motion asserted that mental health treatment had been withdrawn by personnel at the Department of Corrections and Mr. Thompson's mental state had severely decompensated, rendering him incompetent. (Attachment L, *Ex Parte* Motion 2/12/99). It was at a status hearing that Assistant Attorney General Smith first introduced the idea of appointing a conservator for forced medication purposes. (Attachment M, Transcript, p. 6, Hearing 3/8/98). The district court ordered the parties to submit points of law and scheduled a hearing. (Attachment M, p. 15-16). Mr. Thompson's memorandum of law vigorously opposed the appointment of a fiduciary to Mr. Thompson. (Attachment N, Memorandum 4/1/99). Subsequently, Mr. Thompson's motion was withdrawn because Mr. Thompson's treating mental health staff adjusted their treatment and again provided him with medication and Mr. Thompson's condition was showing improvement. (Attachment O, Withdrawal Motion 4/7/99).

C. Mr. Thompson's competence was an issue during proceedings in this Court.

On March 14, 2001, after the briefs were filed in this case, the State of Tennessee, through Attorney General and Reporter Paul Summers, TDOC Staff Attorney Baker and Assistant Attorney General Jordan filed a petition for the

appointment of a conservator in state court. In this petition the State conceded Mr. Thompson's long history of mental illness and asserted that he was "incapable of making rational decisions." (Attachment P, Petition to Appoint Conservator 3/14/01).

On June 26, 2001, the State of Tennessee, through TDOC Staff Attorney Baker, denied a request for medical records made by Mr. Thompson's counsel. The basis for the denial of records is the release form which accompanied the request. The State of Tennessee's position was that the release form signed by Mr. Thompson was invalid in light of the appointment of a conservator. (Attachment Q, Letter 6/26/01). The State alleged that Mr. Thompson's mental state was so depreciated that it rendered a signed release form for medical records invalid.

On October 16, 2001, Assistant Attorney General Jordan represented to the Seventh Circuit Court of Davidson County, Tennessee that the Tennessee Department of Corrections believes Mr. Thompson is incompetent. (Attachment R, Transcript, p. 9, Hearing 10/16/01).

D. The state court has recognized the inter-related nature of the state and federal proceedings.

The state court has recognized the gravity of the conservatorship action and its relationship to Mr. Thompson's death sentence calling the state proceeding

"very germane, at the very least collateral, to the sentence because the sentence is death." (Attachment D, Transcript 1/25/02 p. 87-90). The state court reasoned:

> Yet for the State to carry out the death sentence, at the time of his execution, he must be competent. ... I think it would be a terribly narrow interpretation for me to say that determining today whether he does or does not need a conservator, whether he does or does not need this medication, and that that doesn't have anything to do with whether he is or is not competent for the carrying out of the sentence, I think that would be one of the worst cases of my prejudging something without ever hearing the evidence.

On another occasion, the state court noted the impropriety of the state attorneys in the conservatorship action freely sharing Mr. Thompson's medical information with the state attorneys that are seeking to enforce Mr. Thompson's death sentence. (Attachment E, Transcript p. 76-84, 8/28/02). To prevent further harm, the Court imposed a "Chinese wall" to prevent such a free flow of information. (Attachment S, Order p. 3-4, 10/9/02). Clearly, the state court realized the nexus between the state and federal proceedings, as did this Court when it entered its expanded appointment order.

E. <u>The state court conservatorship proceeding is directly related to federal court proceedings.</u>

The above examples demonstrate the inter-related nature of the state court proceedings and federal court proceedings in Mr. Thompson's case. It is imperative that Mr. Thompson have continuity of counsel in these proceedings to

effectively represent him and litigate his claims, including his future *Ford* claim. To require Mr. Thompson to attempt to secure different counsel for the state proceedings not only compromises his federal court litigation and places a distinct disadvantage upon him not shared by the State, but, in all probability, it would leave him without counsel. Because the state court proceeding is ancillary to Mr. Thompson's federal proceedings this Court's previous appointment order should remain in effect. The motion to reconsider should be denied.

V. WITH THIS COURT'S PERMISSION, WHICH HAS ALREADY BEEN GRANTED, FDSET IS AUTHORIZED TO REPRESENT MR. THOMPSON IN THE STATE COURT PROCEEDING.

FDSET is authorized to represent its clients in ancillary state court proceedings. First, the Criminal Justice Act, 18 U.S.C. § 3006A(c), provides:

> A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate or the court through appeal, *including ancillary matters appropriate to the proceedings.*

(Emphasis added). The Criminal Justice Act Plan approved by this Court provides representation "for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA." (Attachment T, CJA Plan p.5).

Second, 21 U.S.C. § 848(q)(8) directs that:

> ...each attorney so appointed *shall* represent the defendant *throughout every subsequent stage of available judicial proceedings*, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, *and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.*

(Emphasis added). "The statute's plain meaning concerning the payment of fees *without reference to the forum* is made clear by the congressional directive that federally appointed counsel represent the defendant in competency and clemency matters," and other proceedings which ordinarily occur in state forums in connection with a federal habeas case. *Gordon v. Vasquez*, 859 F.Supp. 413, 418 (E.D.Cal. 1994)(emphasis added) *citing Hill v. Lockhart*, 992 F.2d 801, 803-804 (8th Cir. 1993)(the statute requires provision of attorneys for competency and clemency proceedings even though they are 'frequently [] not commenced until state and federal post conviction relief have been denied') *aff'd in relevant part Calderon v. U.S. District Court (Gordon)*, 107 F.3d 756 (9th Cir. 1997)(district court may consider whether granting a fees request under section 848(q)(9) for investigation of petitioner's state court case will assist the defendant in preparing for his federal habeas efforts as this request is authorized in "any post-conviction proceeding" under the federal habeas corpus statutes and section 848(q)(5)-(9));

see also Hickey v. Schomig, 420 F.Supp.2d 793, 795 (N.D.Ill. 2002)(holding that the plain language of § 848(q)(8) does extend to state proceedings). Moreover, Congress' use of the broad, flexible phrase "all available post-conviction process and ... other appropriate motions and procedures, and... such competency proceedings and proceedings for . . . clemency as may be available to the defendant" further indicates that it meant state court proceedings, which vary greatly from state to state, rather than the proceedings uniformly available to federal capital defendants.

Third, the Judicial Conference Committee on Defender Services also permits community defender appearances in state court to represent an individual under a state-imposed death sentence in a state proceeding when "a presiding judicial officer in a federal judicial proceeding involving the individual has determined that such use of Defender Services appropriation funds is authorized by law." The Committee has defined "appearance" to mean "an involvement in a state court proceeding ancillary to a 28 U.S.C. § 2254 capital action." (Attachment U, Administrative Office Memorandum 9/20/00 re: state court appearances ancillary to federal habeas corpus representations). Such ancillary proceedings "include: motions for stay of execution in state court; matters pertaining to exhaustion of remedies in state court; pleadings related to successor

post-conviction litigation; and motions concerning various other activities." (*Id.*). Under these provisions and with this Court's permission, FDSET is clearly authorized to appear in state court on Mr. Thompson's behalf.

Fourth, Federal Defenders are authorized to appear in ancillary state court proceedings even if federally funded private counsel are not. Aside from the *House* decision which is not yet final, the only cases touching on the appearance of federally-paid counsel in state court, *see, e.g., In re Lindsey*, 875 F.2d 1502 (11th Cir. 1989), reveals why that is so. *Lindsey*, as well as the other cases interpreting the scope of the "ancillary matters" provisions of 18 U.S.C. § 3006A, does not address the authority of federal defender attorneys to appear in state court, rather whether private attorneys appointed under the CJA should be compensated for activities undertaken in state court. As the nature of those decisions makes clear, any limitations which might be implied from the language of the CJA are not limitations on activity or authority, but limitations on federal compensation for those activities.[7]

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[7]Because these provisions at most limit the availability of compensation, the State no more has standing to seek to "enforce" those provisions than it would to challenge FDSET's issuance of a paycheck to undersigned counsel. Similarly, this court has no more authority to act upon that request than it would to prevent that paycheck from being issued. *Calderon v. U.S. District Court (Gordon)*, 107 F.3d 756, 761 (9th Cir. 1997).

It is, therefore, not surprising that federal defender organizations and federal public defenders often appear in state court. An extremely abbreviated computer research session reveals that these organizations have appeared as counsel of record in no less than 34 reported[8] state court proceedings.[9] The nature of these proceedings range from the litigation of claims of constitutional error (as is the case here), *In re Coleman*, 95 Ohio St.3d 284, 767 N.E.2d 677 (Ohio 2002), to seeking to set aside orders in divorce cases. *Matter of Marriage of Hampshire*, 261 Kan. 854, 934 P.2d 58 (Kan. 1997). Their appearances have occurred in jurisdictions as remote as Montana, *State v. Leifert* 309 Mont. 19, 43 P.2d 329 (Mont. 2002), and as near as our own state of Tennessee, *Coleman v. State*, 3 S.W.3d 19 (Tenn.Crim. App. 1998).

By representing its client, Mr. Thompson, in ancillary state court proceedings FDSET is simply engaging in activities routinely undertaken by federal defenders throughout the country. The motion to reconsider should be denied.

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[8]That figure does not reflect the obviously much larger number of instances where federal defender organizations and/or federal public defenders have appeared in lower courts or courts whose proceedings are not memorialized in the court reporters.

[9]*See*, Attachment V, Memorandum in Support of Response to Motion to Preclude, 7/23/02, Attachment A.

WHEREFORE, because the State's motion lacks standing, legal and moral authority and because it is proper under the governing rules that FDSET continue to represent Mr. Thompson in this ancillary state court proceeding, Mr. Thompson respectfully suggests that the Court's order of July 26, 2002, should not be disturbed and the State's motion should be denied.

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

By Dana C Hansen
Dana C. Hansen
Assistant Federal Community Defender
530 S. Gay St., Suite 900
Knoxville, TN 37902
(865) 637-7979

CERTIFICATE OF SERVICE

I, Dana C. Hansen, hereby certify that a true and correct copy of the foregoing document was mailed to:

Jennifer L. Smith, Esquire
Office of Attorney General and Reporter
Criminal Justice Division
P. O. Box 20207
Nashville, TN 37202

this the 27th day of August, 2003, by postage prepaid delivery.

Dana C Hansen
Dana C. Hansen

APPENDIX

"N"

CASE NO. 00-5516

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GREGORY THOMPSON,

Petitioner-Appellant

v.

RICKY BELL, Warden,

Respondent-Appellee

On Appeal from the United States District Court for the
Eastern District of Tennessee, Chattanooga Division

**FINAL BRIEF OF APPELLANT,
GREGORY THOMPSON**

Dana C. Hansen
Assistant Federal Community Defender
Federal Defender Services Of Eastern
Tennessee, Inc.
530 S. Gay Street, Suite 900
Knoxville, TN 37902
(865) 637-7979
Counsel for Petitioner-Appellant

ORAL ARGUMENT REQUESTED

minimize the effect of such drugs; the sedative Vistaril; and Ativan/Lorazepam and Valium to reduce agitation.

Post-conviction counsel repeatedly requested funds for mental health experts in order to plead and prove a claim of ineffective assistance of counsel. The prosecutor argued that post-conviction counsel were not entitled to experts at state expense. (R. 5: Glenn Pruden, Post-Conviction Transcript v. I, p. 16; Apx. 844). In support of the motion for funding, counsel submitted the affidavit of Dr. Gillian Blair. Dr. Blair's affidavit and post-conviction testimony reflected her need for a complete social history, additional testing and interviews before she could render an opinion on Mr. Thompson's mental status at the time of the crime, at trial, and at the present time. (*See generally* Dr. Blair, Post-conviction Transcript, v. II, pp. 199-219; Apx. 862). Dr. Blair opined that based on the Riverbend records, her test results from 1992, and the brief social history available, further investigation and examination of Mr. Thompson was required. Dr. Blair testified that since 1985 Mr. Thompson had shown a deteriorating mental status. (*Id.* at 209; Apx. 872). Mr. Thompson had been diagnosed with bipolar disorder, schizo affective disorder or schizophrenia. *Id.* She further testified that schizophrenia and bipolar disorder, indeed all forms of psychosis, generally begin in early adulthood, (*Id.* at 215; Apx. 878), which coincides with the timing of the instant offense. Dr. Blair stated that Mr. Thompson's troubles in the Navy just prior to the crime would suggest that he was becoming mentally ill at that time. (*Id.* at 216; Apx. 879). However, further

information was needed in order to render an opinion and diagnosis of Mr. Thompson at that time. Dr. Blair also stated that further evaluation of Mr. Thompson was necessary to determine his present competency. (*Id.* at 207; Apx. 870).

The post-conviction court denied funding for expert assistance at the post-conviction hearing. The court reasoned that funds were unnecessary because Petitioner had not shown a "need", further funding would result in a delay of the proceedings, and the issue was a matter of record. With regards to Dr. Blair's affidavit which demonstrated need for additional funding, the post-conviction court stated:

> I have now reviewed that affidavit and your motion is for funding ... It is my position at this time that information, her expertise, her opinions are already formed. You can simply subpoena her in...
>
> MR. FORD: Your Honor, can I point out in her affidavit, this doctor indicates she would like to be able to perform certain additional tests on our client to determine his competence at this time and states in there how much money approximately it would cost to perform those. Although I understand Your Honor indicating she has put opinions in this affidavit, she indicates she needs to do more testing and meet with him personally to do this in order to form a proper opinion in the matter ... That is one of our basis for request for funding.

(R. 5: Joseph E. Ford, Pretrial Hearing, Jan. 16, 1995, p. 6; Apx. 839). Defense counsel attempted to explain that Dr. Blair had formed preliminary opinions based on existing information. However, the existing information indicated a need for

further investigation, tests, and examination. (*Id.* at 7-8; Apx. 840). Defense counsel argued:

> She [Dr. Blair] concludes and this is really language taken from her affidavit, that if petitioner is found to be suffering from neurological or psychological impairments, it is likely that some degree of such impairment would have been existed at the time of the offense, and then she goes on about whether it is a present situation that the Court has referred to. I don't think she has really had sufficient – I know she hasn't spent sufficient time and has not conducted the tests.

(R. 5: Robert Warner, Jr., Pretrial Hearing, Jan. 16, 1995, p. 7; Apx. 840). The post-conviction court responded that further investigation and evaluation would constitute unnecessary delay. *Id.* at 8; Apx. 841). Moreover, the court opined that defense counsel had all the evidence they needed to present at the hearing. The court reasoned:

> ... we have gone through this proposition of motion for sufficient funding for expert investigative assistance. It's my view on that, and my view is fortified by reading your amended petition, I think most of these issues are matters of record that don't need further investigation. They just need to be brought before the Court from the record.

(R. 5: Judge William Russell, Pretrial Hearing, Jan. 16, 1995, p. 4; Apx. 838).

Although the post-conviction court found no "need" for further expert assistance, the court later used the fact that Dr. Blair could not express an opinion as to the issues of Mr. Thompson's mental health to limit Dr. Blair's testimony and, subsequently, to deny Mr. Thompson relief from his unconstitutional conviction and sentence. For example, throughout Dr. Blair's testimony the

prosecutor made repeated objections on the basis that Dr. Blair did not have an ultimate opinion. (R. 5: *See e.g.*, Post-conviction Transcript, v. II, pp. 208, 215, 216, 220, 259; Apx. 871, 878, 879, 883, 888). Although the post-conviction court allowed most of Dr. Blair's answers, it did so remarking that the weight of the testimony was specious. *See id.* The court, however, did not allow Dr. Blair to testify about mitigating circumstances.

> MR. WARNER: Would a condition such as you observed in Mr. Thompson, even if it was in an earlier stage at the time this offense was allegedly committed back in 1985, would that type of either – I'll use the word "behavior" or "condition" – would that have been the type of thing you would normally bring out as a mitigating factor if you were able to make a proper diagnosis?
>
> MR. WEITZMAN: Objection, speculation.
>
> THE COURT: Sustained.

(R. 5: Post-conviction Transcript, v. II, p. 220; Apx. 883). In its order denying post-conviction relief, the trial court found, "(1)... Present counsel presented no proof of mental problems on the part of Mr. Thompson that would have been a defense to the charge, or that would constitute a shield against execution." (R. 5: *Thompson v. State*, No. 24-736, Order and Memorandum Opinion denying relief, p. 3 (Cir. Ct. Coffee Co. 1995); Apx. 174). The court apparently found "no proof of mental problems" despite the fact that (1) the records from Riverbend were unchallenged by the prosecution, (2) Dr. Blair testified about Petitioner's diagnosis and treatment with powerful anti-psychotic drugs, and (3) Petitioner

repeatedly requested funding for additional expert services but was denied same by the court.

Likewise, the Court of Criminal Appeals denied Petitioner's ineffective assistance of counsel claim finding that Petitioner had failed to demonstrate prejudice from the failure of trial counsel to further investigate Petitioner's mental state. The Court of Criminal Appeals found:

> Petitioner has failed to establish that the head injuries had any effect upon his mental stability at the time of the murder. Further he has failed to establish that any type of psychological impairment in general may have existed which would have been mitigating evidence. Because Dr. Blair declined to give an opinion on these important issues, the evidence does not preponderate against the trial court's finding that the defense attorneys were not ineffective.

Thompson v. State, 958 S.W.2d 156, 165 (Tenn.Crim.App. 1997) (emphasis added).

The state court findings penalizing Mr. Thompson for failing to present evidence he was prevented from obtaining is "objectively unreasonable." Moreover, the state court findings that Mr. Thompson "malingered" schizophrenia is an unreasonable fact determination. The district court erroneously deferred to the state court decision. In any event, the district court analyzed the state court decision using the "reasonable jurists" standard denounced by the Supreme Court. Remand is required for reconsideration of Mr. Thompson's claims under the appropriate standard of review.

II THE DISTRICT COURT ERRED IN DENYING MR. THOMPSON'S HABEAS PETITION WITHOUT A HEARING WHERE MR. THOMPSON DID NOT FAIL TO DEVELOP THE FACTUAL BASIS OF HIS CLAIMS IN STATE COURT.

The United States Supreme Court's decision in *(Michael) Williams v. Taylor*, 529 U.S. ___, 120 S.Ct. 1479, 146 L.Ed.2d 435 (2000), construed 28 U.S.C. §2254(e)(2)'s rule prohibiting evidentiary hearings in federal habeas corpus cases to apply only where "there is lack of diligence, or some greater fault, attributable to the prisoner or the prisoner's counsel." *Williams*, 120 S.Ct. at 1488. Elaborating on this point, the Court made clear that "[t]he question is not whether the facts could have been discovered but instead whether the prisoner was diligent in his efforts." Id. at1490.

Mr. Thompson made a diligent and documented effort to develop the facts underlying his claims in state court proceedings by requesting resources to conduct an investigation and resources to obtain expert assistance and by requesting an evidentiary hearing in state court. *Id.* ("Diligence . . . depends upon whether the prisoner made a reasonable attempt, in light of the information available at the time, to investigate and pursue claims in state court; it does not depend . . . upon whether those efforts could have been successful. . . . [O]nly a prisoner who has neglected his rights in state court need satisfy [§2254(e)(2)'s exceptions]"). The state court did not provide the expert assistance necessary for Mr. Thompson to present his claims of constitutional error. When Mr. Thompson

attempted to secure appellate review of the denial of services, the courts denied, by design or inadvertence, a transcript of the hearing on the motion for expert services, thus (allegedly) precluding state review of the issue. Mr. Thompson should not be deemed to have "failed to develop" the facts, and §2254(e)(2) should not apply to preclude a hearing. *See Williams*, 120 S.Ct. at 1490 ("Diligence will require in the usual case that the prisoner, at a minimum, seek an evidentiary hearing in state court in the manner prescribed by state law"). The district court's erroneous decision finding otherwise is reviewed by this Court *de novo*.

Many of Mr. Thompson's efforts to obtain the information in his habeas petition and present the same to the state courts were outlined by the Tennessee Court of Criminal Appeals. *Thompson v. State*, 958 S.W.2d at 169-171. Mr. Thompson was never found to have been anything less than diligent in his attempts to discover this information.

As described more fully above in Issue I and referred to herein, Mr. Thompson was denied funding for mental health and investigative experts at trial and during state post-conviction proceedings. At his post-conviction proceeding Mr. Thompson filed an *ex parte* motion for funds to pay a mental health expert and an investigator. *Thompson v. State*, 958 S.W.2d at 169. The post-conviction judge, Judge Ewell, refused to grant an *ex parte* hearing, but allowed one to take place in open court. Id. at 170; (R. 5: Post-conviction Technical Record, p. 34,

Order; Apx. 141) The motion for expert funding was denied. *Thompson v. State*, *supra* at 169. Thereafter, Judge Ewell recused himself and Judge Perry was assigned to the case. *Id.* Petitioner filed another request for expert funds before Judge Perry. *Id.* Judge Perry stayed the motion pending a decision of the Tennessee Supreme Court in the *Owens* case.[3] *Id.* While awaiting the decision, Judge Perry was removed from the case and Judge Russell was assigned. *Id.* Mr. Thompson renewed his motion for expert funds on three separate occasions. *Id.* at 170-71. All were denied. *Id.* at 171; (R. 5: Post-conviction Technical Record, p. 262, Order, Apx. 142; R. 5: Post-conviction Technical Record, p. 292, Order; Apx. 160). When Mr. Thompson requested such services but was denied the same by the state post-conviction court, the Tennessee appellate courts, in affirming that denial, retroactively imposed the pleading and proof requirements from the *Owens* case which were not in existence at the time Petitioner made his request. *See Thompson v. State*, 958 S.W.2d at 169.

The Tennessee Court of Criminal Appeals denied further review of the issue because "[t]he transcript of the hearing on the motion for expert services conducted in front of Judge Ewell is not included in the record on appeal." *Id.* at 171. However, that same court had previously denied Mr. Thompson's motion

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[3] *Owens v. State*, 908 S.W.2d 923 (Tenn. 1995), provided guidelines on how to request [expert] services and when the trial court should grant the services. *Thompson v. State*, 958 S.W.2d at 169.

for a transcript of the hearing. Judge Ewell's decision denying expert funds was the subject of Mr. Thompson's application for an extraordinary appeal to the Court of Criminal Appeals filed on August 9, 1991. *Id.* at 170. In that request Mr. Thompson pointed out that a motion had been filed and was pending requesting Judge Ewell to order the transcription of the hearing on expert services. Mr. Thompson expressly requested that, if Judge Ewell did not order the transcript, the Court of Criminal Appeals require transcription of the hearing. (R. 5: App. for Extraordinary Appeal of Trial Court's May 29, 1991 Order Denying Funds, p. 4-5; Apx. 148). That motion was never ruled upon before Judge Ewell recused himself and no transcript was ever ordered. The Court of Criminal Appeals denied the request for an extraordinary appeal. *Thompson v. State*, 958 S.W.2d at 170. Subsequently, on direct appeal from the post-conviction hearing, the Court of Criminal Appeals refused any review of the issue.

Under the Tennessee Rules of Appellate Procedure, Rule 24(a) regarding preparation of the record on appeal, "the parties need do nothing (other than order preparation of a transcript) if the full record is deemed necessary for the appeal." Comment to TRAP 24(a). Thus, Mr. Thompson fulfilled his duty to prepare the record on appeal when he requested an order for transcription of the proceedings at issue. In the order denying Mr. Thompson's motion for post-conviction relief, Judge Russell ordered the court reporter to prepare the transcript. (R.5, *Thompson v. State*, No. 24-736, Order and Memorandum Opinion denying relief p. 1; Apx.

174). Mr. Thompson acted diligently to present the issue for appellate review when he followed the required procedure. Yet contrary to state law, the state courts failed to order a transcript of the proceedings regarding Mr. Thompson's request for expert assistance and/or a portion of the proceeding was omitted because of clerical error. *See* TRAP Rule 26(b)("Nothing in this subdivision shall be construed to authorize dismissal of an appeal due to the errors or omissions of the clerk of the trial court."). Moreover the appellate court could have ordered the filing of the omitted transcript at anytime. TRAP Rules 26(b) and 24(e)(omissions in the record on appeal may be remedied at any time by the trial or appellate court).

Not only does the Tennessee Court of Criminal Appeal's opinion document much of the State of Tennessee's interference with Mr. Thompson's efforts to present his claims to the state courts, it's justification for that interference reveals the futility of Mr. Thompson's efforts to overcome the obstacles created by the State. The Tennessee court's refusal to review the denial of Mr. Thompson's expert services requests and the suggestion that it was somehow his own fault for not complying with the Owens decision is patently incorrect. *Owens* had not been handed down when Mr. Thompson was seeking services. In fact, on appeal the prosecution argued that because *Owens* had not been decided, Mr. Thompson was not entitled to expert services. *Thompson v. State*, 958 S.W.2d at 169. Notably the prosecution did not argue that Mr. Thompson's request for expert services

failed to meet the Owens requirements. In fact Mr. Thompson's requests clearly demonstrated a need for expert services.

Moreover, Respondent's own expert, Dr. Blau, has provided testimony at deposition which establishes not only how the state court's denial of adequate funding for expert witnesses interfered with and denied Mr. Thompson a full and fair opportunity to present his mental health claims to the state courts, but also the truth of each and every one of his allegations that such an opportunity was further obstructed when counsel for the state affirmatively presented false evidence and argument regarding Mr. Thompson's mental health during both trial and post-conviction proceedings. Dr. Blau stated under oath: (1) that in order to render a competent opinion regarding Mr. Thompson's mental condition a full neuropsychological evaluation and additional other testing are required (R. 86: Response to Motion for Summary Judgment, Attachment "D", Blau depo. at pp. 14 and 47; Apx. 530, 534); and (2) that a conclusion regarding whether Mr. Thompson had "malingered" mental illness could not be reached on the basis of the information and test results in Dr. Blau's possession (which, significantly, was more extensive than that which was in the possession of Dr. Watson of MTMHI and counsel for the State of Tennessee when he argued (and the state courts "found") both at trial and during state post-conviction proceedings that Mr. Thompson had "malingered" his mental illness). (*Id.* at 27-30; Apx. 531).

Given these admissions, there is simply no question but that: (1) the State of Tennessee's post-conviction counsel had no basis in fact for arguing that the records in his possession demonstrated that Mr. Thompson had "malingered" mental illness and, accordingly that the prosecution had deliberately misrepresented that evidence; (2) there is no basis in the record, as required under § 2254(d)(2), to support the Tennessee courts' corresponding "findings" that Mr. Thompson had "malingered" mental illness;[4] (3) Mr. Thompson's psychological expert during state post-conviction proceeding did require, as she so testified, further testing of Mr. Thompson to reach a conclusion regarding the presence of significant mental illness and/or statutory and non-statutory "mental health" mitigation under Tennessee law; and (4) the Tennessee court's refusal to allow such testing deprived Mr. Thompson of a fair hearing on the issue.

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[4] On direct appeal the state argued, and the court apparently accepted, the deposition testimony of Dr. Watson, a state employed expert, that Mr. Thompson "appeared" to malinger symptoms of schizophrenia was evidence of the absence of mental health mitigation. State v. Thompson, 768 S.W.2d 239, 244 (Tenn. 1989). At post-conviction, the state argued, and the court accepted, that it was not ineffective assistance of counsel for trial counsel to agree to the introduction of Dr. Watson's deposition because the possibility of malingering which Dr. Watson described in his deposition had been confirmed by prison records accumulated after Mr. Thompson's incarceration and that therefore Mr. Thompson could not show any prejudice from trial counsel's failure to protect Mr. Thompson's right to confront Dr. Watson. *Thompson v. State*, 958 S.W.2d . at 167-168. Now that Mr. Thompson has received expert psychiatric assistance, it is known that the MTMHI testing is invalid and prison records document Mr. Thompson's legitimate mental illness.

Mr. Thompson made a diligent effort to present to the state courts the facts he is now able to present to this Court (because the federal government has now afforded him the resources necessary). They were not presented to the state courts or to the extent they were presented were rejected by the state courts solely because the State of Tennessee denied Mr. Thompson the necessary expert resources. Fault cannot be attributed to Mr. Thompson. The case should be remanded for an evidentiary hearing on Mr. Thompson's claims which required the assistance of experts to plead and prove including his claims of ineffective assistance of counsel, (R. 17: habeas petition claim ¶ 22; Apx. 355), competency at the time of the offense and to stand trial, (R. 17: habeas petition claim ¶ 21; Apx. 353), and *Brady/Giglio* claim (R. 17: habeas petition claim ¶ 41; Apx. 341).

III THE DISTRICT COURT ERRED BY MAKING FACTUAL FINDINGS WITHOUT AFFORDING MR. THOMPSON THE OPPORTUNITY TO PRESENT EVIDENCE WITH REGARDS TO THOSE FINDINGS.

The district court's grant of summary judgment is reviewed *de novo*. *Weberg v. Franks*, 229 F.3d 514 (6th Cir., October 10, 2000), *citing Hartsel v. Keys*, 87 F.3d 795, 799 (6th Cir.1996).

Summary judgment is proper only if there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The court is "required to view the facts and all inferences drawn therefrom in the light most favorable to the nonmoving party." *Weberg*,

APPENDIX

"O"

CASE NO. 00-5516

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

GREGORY THOMPSON,

Petitioner-Appellant

v.

RICKY BELL, Warden

Respondent-Appellee

On Appeal from the United States District Court for the Eastern District of Tennessee, Chattanooga Division

FINAL REPLY BRIEF OF APPELLANT, GREGORY THOMPSON

Dana C. Hansen
Assistant Federal Community Defender
Federal Defender Services Of Eastern Tennessee, Inc.
530 S. Gay Street, Suite 900
Knoxville, TN 37902
(865) 637-7979
Counsel for Petitioner-Appellant

ORAL ARGUMENT REQUESTED

I THE DISTRICT COURT ERRED WHEN IT REVIEWED THOMPSON'S CLAIMS UNDER THE "ALL REASONABLE JURISTS" STANDARD DENOUNCED BY THE SUPREME COURT IN *WILLIAMS v. TAYLOR* TO SUMMARILY DENY THOMPSON'S PETITION.

In his brief Respondent initially takes issue with Thompson's assertion that the state court decision does not constitute an "adjudication on the merits" under 28 U.S.C. § 2254(d). Thompson has argued that since the state courts denied him the proper resources and a full opportunity to litigate his claim there was no "adjudication on the merits." *See e.g. Neal v. Gramley*, 99 F.3d 841, 843 (7th Cir. 1996), *cert. denied*, 522 U.S. 834, 118 S.Ct. 104, 139 L.Ed.2d 58 (1997); *Lindh v. Murphy*, 97 F.3d 856, 871 (7th Cir. 1996), *reversed in other part*, 521 U.S. 320, 117 S.Ct. 2059, 138 L.Ed.2d 481 (1997).

Thompson's point is strengthened by *Williams (Terry) v. Taylor*, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000), in which the Supreme Court noted that federal analysis under § 2254(d) relies heavily on the reasons the state court put forth for denying the writ. The *Williams* Court stated that the text of the "contrary to" portion of § 2254(d)

> suggests that the state court's decision must be substantially different from the relevant precedent of this court. A state court decision will certainly be contrary to our clearly established precedent if the state court applies a rule that contradicts the governing law in our cases.

Id. at 405. Analysis of an "unreasonable application" of Supreme Court precedent also depends on the reasons the state court gave for its decision:

> First, a state-court decision involves an unreasonable application of this Court's precedent if the state court identifies the correct governing legal rule from the Court's cases but unreasonably applies it to the facts of the particular state prisoner's case. Second, a state-court decision also involves an unreasonable application of this Court's precedent if the state court either unreasonably extends a legal principle from our precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it would apply.

Id. at 407.

Williams is important in light of what constitutes the "merits of an action":

> The merits of an action are not concerned merely with the proven facts of a case but encompass the application of law to the claims, motives, causes and substantial grounds of action as distinguished from matters of practice, procedure, jurisdiction or form.

Stitzer v. University of Puerto Rico, 617 F.Supp. 1246, 1256 (D.C.P.R. 1985).

Where the state court decision rests on an inadequate opportunity to view the facts and to make an enlightened decision based on those facts, *Williams* implies that no "adjudication on the merits" has occurred. Where the state courts improperly restrict the prisoner's right to properly present a particular claim, they cannot have viewed the "substantial grounds" of that claim, and thus cannot have properly applied any controlling Supreme Court law to the claim. Consequently, they

"cannot be held to have adjudicated" the claim on its merits. *See e.g. Washington v. Schriver*, __F.3d __, 2001 U.S.App. LEXIS 129, slip op. at 22 (2nd Cir. 2001).

Precisely that occurred here. The state courts deprived Thompson of proper funding for expert assistance. The deprivation may be seen in the affidavit of Dr. Gillian Blair, a neuropsychologist who partially evaluated Thompson during his state post-conviction proceedings. Dr Blair therein asserted that Thompson showed manifest signs of mental illness, including:

> low level auditory hallucinations, impaired insight and judgment and compromised coherence to a frankly psychotic state...
>
> If Thompson is found to be suffering from neurological or psychological impairment as described above, it is likely that some degree of such impairment would have existed at the time of the offense and would have been a significant factor in determining whether or not Thompson was able to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law when he committed the homicide of which he stands convicted...It would also have been significant mitigating evidence which should have been considered in the determination of whether a penalty less than death was appropriate in his case...
>
> In order to arrive at an adequate understanding of Thompson's neurological and psychological condition, it would be necessary to administer a full battery of tests and conduct a mental status interview...[A] complete social and medical history must be compiled in order to adequately document Thompson's psychological development, incidents of trauma, and evidence of pre-existing conditions...

(R. 112; Memorandum of Law in Support of Petitioner's Application for

Extraordinary Appeal of the Trial Court's Order Dated May 29, 1991, Denying Funds for Expert Assistance, Exhibit M, Affidavit of Dr. Blair, p. 2-4; Apx. p. 635). However, the state courts denied Thompson the funding Dr. Blair confirmed would be necessary; thus Petitioner was unable to present full evidence of his mental status at the time of the offense. The state courts then rendered a decision without the benefit of evidence that would have been presented had proper funding been approved. This is not an adjudication on the merits under *Washington* and *Williams*. Consequently, pre-AEDPA law must be used in the federal courts – which entails *de novo* review.

In the alternative, even if the AEDPA must be used, the district court failed to apply § 2254(d) in the manner prescribed by *Williams*, since a subjective standard of review disapproved by the *Williams* court was used to evaluate Thompson's petition. *Williams*, 529 U.S. at 409-10. Respondent acknowledges this, but urges that remand is unnecessary (Respondent's Brief, p. 22-3) since "this Court is bound to apply the standard set forth by the Supreme Court in Williams for its analysis under § 2254(d)." (Respondent's Brief, p. 25).

However, the cases Respondent cites in support of his suggestion that no remand is necessary provide little support for that notion. *Harris v. Stovall*, 212 F.3d 940 (6th Cir. 2000) (Respondent's Brief, p. 23) was not remanded although an

incorrect standard was used below, because the petitioner would have failed to meet his § 2254(d) burden anyway – there was no Supreme Court authority with which to measure the state court's decision when determining whether the latter was "contrary to" or an "unreasonable application of" the former. *Harris*, 212 F.3d at 945. *Hammon v. DHL Airways*, 165 F.3d 441 (6th Cir. 1999) (Respondent's Brief, p. 23) also was not remanded, but only because the district court's analysis – although erroneous – was sufficiently close to the correct standard of review that affirmance was proper. *Hammon*, 165 F.3d at 445. In Thompson's case the district court's standard of review was materially different from the proper one, as *Williams* explicitly made clear. And in *Fryman v. Federal Crop Insurance Corporation*, 936 F.2d 244 (6th Cir. 1991) (Respondent's Brief, p. 23), an erroneous jury instruction had been corrected by the magistrate's grant of a new trial – thus even though the new trial order had been achieved via a "circuitous route," there was little about which the appellant could complain on that matter. Remand would thus have been inappropriate. *Fryman*, 936 F.2d. at 250.

On the contrary, in Thompson's situation the Court has previously required remand for new analysis. In *Cox v. Kentucky Department of Transportation*, 53 F.3d 146, 149 (6th Cir. 1995), for example, the district court had granted summary

judgment on two claims, which this Court reviewed *de novo*. *Cox*, 53 F.3d at 149. Since the district court had used an erroneous standard to review one of the issues, that claim was appropriately remanded for new analysis:

> Because the district court applied the incorrect legal standard to the evaluation of the § 1983 cause of action, this court reverses and remands on that issue.

Id.

In sum, remand of Thompson's petition for new analysis under an objective standard of reasonableness is appropriate and necessary.

II THE DISTRICT COURT ERRED IN DENYING THOMPSON'S HABEAS PETITION WITHOUT A HEARING WHERE THOMPSON DID NOT FAIL TO DEVELOP THE FACTUAL BASIS OF HIS CLAIMS IN STATE COURT.

Respondent argues that an evidentiary hearing on Thompson's mental health claims is not warranted solely because the transcript of a May 17, 1991, hearing on the defense request for experts was not included in the record on appeal.[1] (Respondent's Brief, p. 38). This argument amounts to nothing more than a distraction. The transcript is irrelevant to the record on appeal because the only alleged purpose for its inclusion is for the state court's *Owens* analysis -- an analysis that necessarily imposes retroactive requirements upon Thompson and therefore is an inadequate basis for denying relief in federal court. (*See* Petitioner's Brief, p. 35, 37-38).

The state court decision which retroactively imposes requirements upon Thompson's expert services request in order to deny Thompson's due process claim regarding denial of expert services states in full:

> Now, the petitioner argues that he was denied his right to due process by the trial court's failure to authorize the funds for a

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[1]Respondent argues in the alternative that if §2254(e)(2) is inapplicable "a hearing was not required because Thompson failed to present evidence demonstrating a material factual dispute in response to the State's motion for summary judgment." (Respondent's Brief, p. 39-40). Thompson directs the Court to his argument in Section III *infra* for an in-depth discussion of the expert opinions rendered in Thompson's case which demonstrate that material issues of fact do exist.

psychologist or psychiatrist and an investigator. He contends the original order denying services was rendered void when Judge Ewell recused himself. The petitioner insists that the services were necessary to establish the ineffectiveness of trial counsel by failing to pursue and present significant mitigating evidence.

This court may not review this issue. The transcript of the hearing on the motion for expert services conducted in front of Judge Ewell is not included in the record on appeal. *Owens* clearly contemplates a presentation of proof: "The trial court should grant the motion if, at the hearing, the petitioner demonstrates that investigative or expert services are necessary to ensure the protection of the petitioner's constitutional rights." *Owens*, 908 S.W.2d at 928. Without a record of the hearing, this court cannot determine whether Judge Ewell erred by denying the motion. See Edward Jerome Harbison, 1996 Tenn.Crim.App. LEXIS 307, *26, No. 03C01-9204-CR-00125 (Tenn.Crim.App., at Knoxville, May 20, 1996), app. denied, (Tenn., Nov. 12, 1996).
This court may not review this issue.

Thompson v. State, 958 S.W.2d 156, 171 (Tenn.Crim.App. 1997). It is clear from the reasoning of the state court decision that it was requiring the transcript in order to evaluate Thompson's claim under *Owens v. State*, 908 S.W.2d 923 (Tenn. 1995). Because the rules of procedure set forth in *Owens* were issued after Thompson's post-conviction evidentiary hearing any perceived failure to comply with *Owens* at that time is inadequate to bar federal court consideration of the issue. *See Coleman v. Thompson*, 501 U.S. 722, 729, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991); *Ford v. Georgia*, 498 U.S. 411, 423- 425, 111 S.Ct. 850, 112 L.Ed. 2d 935 (1991); *James v. Kentucky*, 466 U.S. 341, 348, 104 S.Ct. 1830, 80 L.Ed.2d

346 (1984); and case law discussed in R. 86: Response in Opposition to Motion for Summary Judgment, p. 11-14; Apx. 485.

The rule used by the state court to analyze Thompson's claim was first announced on October 23, 1995, in *Owens v. State*. The *Owens* decision consolidated two cases in which post-conviction defendants appealed the trial courts' denial of expert services. *Owens v. State*, 923 S.W.2d 923, 925 (Tenn. 1995). The appellants argued that capital post-conviction litigants were entitled to expert services under Tenn. Code Ann. §40-14-207(b); a provision governing state-funded expert services in capital trials. The State of Tennessee argued that there was no right to state-funded support services in post-conviction capital cases under any authority, inherent, statutory, or constitutional. *Id.* at 926. The Tennessee Supreme Court noted prior precedent to the contrary, however, it concluded that both the State and the Court of Criminal Appeals interpreted the statutes at issue too narrowly, *id.* at 928, and held that Tenn. Code Ann. §§ 40-14-207(b) applies to capital post-conviction cases. *Id.* at 929. Clearly Thompson's proceedings, which took place in May 1991 -- before *Owens* was rendered, could not be adequately judged by the rule in *Owens*. *Owens* was neither firmly established nor regularly followed at that time which allowed the State to argue on appeal in 1997 that because *Owens* had not been decided earlier Thompson was

not entitled to expert services. *Thompson v. State*, 958 S.W.2d at 169.

Respondent largely ignores the inadequacy of the *Owens* rule. Respondent briefly acknowledges the issue in a footnote but argues that Thompson "misapprehends the *Owens* decision," because "*Owens* ... simply ... applied the provisions of Tenn. Code Ann. §40-14-207(b) ... to post-conviction capital cases." (Respondent's Brief, p. 35-36 n. 10). However, that is precisely the point. Prior to *Owens* no state court had held post-conviction capital litigants to the standards of §40-14-207(b) and, in fact, state courts had held the opposite; that post-conviction capital litigants were not entitled to state-funded experts. *See e.g.*, *Teague v. State*, 772 S.W.2d 915 (Tenn. Crim. App. 1988), *perm. app. denied* (Tenn. 1989). Thompson was denied expert services in the lower state courts on the basis of *Teague v. State*. (R. 112; *supra* p. 3, p. 8-10; Apx. 485). Any perceived failure to develop the facts under *Owens* is inadequate to bar an evidentiary hearing in federal district court.

Respondent further states in the footnote that "Thompson argued in his application for extraordinary appeal to the Court of Criminal Appeals that he had satisfied those requirements at the May 17, 1991 hearing." (Respondent's Brief, p. 35-36 n. 10). Although Thompson argued that he had demonstrated a "compelling need" for expert services (R. 112, *supra* p. 3; Apx. p. 485) and argued a due

process right to services under *Ake v. Oklahoma*, (*Id.* at p. 9-10; Apx. p. 485), Thompson did not argue that he had satisfied the requirements of *Owens* or §40-14-207(b) because that state law was not established with regards to capital post-conviction litigants. Moreover this observation lends little to the analysis regarding the adequacy of the *Owens* rule.

Instead of directly addressing the adequacy of *Owens*, Respondent argues that Thompson failed to develop his constitutional claim regarding denial of expert services because the transcript of the May 17, 1991, hearing on expert services was not included in the record on appeal. In order to attribute "a lack of diligence, or some greater fault," to Thompson, *Williams (Michael) v. Taylor*, 529 U.S. 420, 120 S.Ct. 1479, 1488, 146 L.Ed.2d 435 (2000), Respondent cites two state court decisions which generally hold that the appellant has a duty to prepare the record of the proceedings relevant to the issues presented for review; *State v. Bunch*, 646 S.W.2d 158 (Tenn. 1983) and *State v. Ballard*, 855 S.W.2d 557 (Tenn. 1993). However, both *Bunch* and *Ballard* are distinguishable from Thompson's case in that neither of those opinions indicate that the appellant had taken any steps to prepare the relevant transcripts for appeal. Given the wholesale negligence of the appellants in *Bunch* and *Ballard* the Tennessee Supreme Court precluded review of the issues not fully documented by the appellate record. In

the instant case, however, Thompson took affirmative steps to request that the transcript of May 17, 1991, be included in the record on appeal. Thompson filed a motion for transcription of the hearing. It requested:

> Comes now the Petitioner, Gregory Thompson, and pursuant to T.C.A. §40-14-312 requests that the court provide the verbatim transcript of the evidentiary hearing held on May 17, 1991. Petitioner would show to the court that this transcription is necessary for providing a complete record of the proceeding to the Court of Criminal Appeals. This court has previously found Petitioner to be indigent.

(R. 112: *supra* p. 3; Apx. 485). This motion did not limit the requested transcript for the purposes of the extraordinary appeal. Respondent's attempt to so limit the request, as evidenced by his argument in footnote 11, p. 38 of Respondent's Brief, is belied by the record. The motion clearly states that the transcript is "necessary for providing a complete record of the proceedings to the Court of Criminal Appeals." *Id.* In any event, unlike the appellants in *Bunch* and *Ballard* Mr.Thompson fulfilled his duty or at least was diligent in preparing the record for appeal.

Moreover, despite the great distraction caused by Respondent's eight-page argument regarding the missing transcript, in the end distraction is all that is accomplished. The record establishes that Thompson's showing of need for expert services at the May 17, 1991, hearing was undisputed. Thompson's Memorandum

of Law in Support of Petitioner's Application for Extraordinary Appeal of the Trial Court's Order Dated May 29, 1991, Denying Funds for Expert Assistance and its supporting affidavits reveal the substance of the May 17, 1991, hearing. (R. 112; *supra* p. 3, and R. 5 Post-conviction Technical Record, Affidavits of Brock Mehler and Dr. Gillian Blair p. 439, 434; Apx. 485, 133 and 129). The Memorandum sets forth in part:

> The compelling need for expert assistance in this case is undisputed. The affidavits of Brock Mehler, an investigator and mitigation specialist with the Capital Resource Center, and Dr. Gillian Blair, a licensed psychologist, attest to this need and were previously filed with the trial court. Neither affidavit has been disputed by the State of Tennessee. Both affidavits are also attached for this court's consideration as Exhibits N and M respectively.
>
> An evidentiary hearing on Petitioner's Motion for Funds for Expert Assistance was held on May 17, 1991. At that hearing, Dr. Gillian Blair testified that in her professional opinion, there is evidence that Gregory Thompson may have been mentally incompetent at the time the offense occurred. Dr. Blair substantiated that a number of areas regarding Thompson had not been investigated in his prior history and additional examination of his past was required.
>
> Dr. Blair further opined that based upon her review of Thompson's medical records and correspondence, his current mental competence is impaired and distorted. Thompson's medical records compiled since his trial reflect Gregory Thompson's rapidly deteriorating mental condition. Such deterioration is consistent with the theory that Thompson's mental condition at the time the offense occurred was impaired.
>
> Significantly, the State of Tennessee did not contest Dr. Blair's testimony, nor did the State of Tennessee seek to rebut, or otherwise contradict the testimony during the evidentiary hearing held on May

17, 1991. The State of Tennessee filed no affidavits and presented no proof that contradicts the evidence of the compelling need for expert assistance.

Id. at p. 3-4 (emphasis supplied). Thus, even if it were permissible for the state courts to engage in an *Owens* analysis of Thompson's expert services request, it is clear that on the record as it exists Thompson would have satisfied the *Owens* requirements for state-funding.

Additionally, although Respondent fails to mention it, Thompson renewed his request for expert funds one month prior to the evidentiary hearing. (R. 5: Post-conviction Technical Record p. 438; Renewed Motion for Funds for Expert Assistance; Apx. 172). Attached to that motion was a second affidavit from Dr. Blair detailing the need for funding. Notably Dr. Blair stated,

> Thompson's observed behaviors at the time of the 1985 assessment, and his acknowledgement of auditory hallucinations, set in the context of a complete social history (including psychiatric disturbance in his family of origin) could have been presented to the Jury as mitigation. Thompson's escalating mental status since 1985 highlights the relevance of such information.

(Id. at p. 4; Apx. 172).

In short, Thompson was diligent in developing his mental health claims in state court.[2] An evidentiary hearing is warranted.

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[2]The District Court's dismissal of Claim 21, competency at trial and the crime, on procedural default grounds is likewise erroneous. *Pate v. United States*,

III THE DISTRICT COURT ERRED BY MAKING FACTUAL FINDINGS WITHOUT AFFORDING THOMPSON THE OPPORTUNITY TO PRESENT EVIDENCE WITH REGARDS TO THOSE FINDINGS.

The district court granted Respondent's motion for summary judgment by crediting the opinions of Respondent's experts over Thompson's experts and by disregarding the findings of the Thompson's experts that he was schizophrenic when he committed the offense.

At the state post-conviction hearing Dr. Gillian Blair testified on Thompson's behalf. Dr. Blair, an in the field of neuropsychology and forensic psychology, was hired to evaluate Thompson. Before meeting him, she reviewed his prison medical record, which

> indicated that since 1985, Thompson had shown a deteriorating mental status. He had become psychotic. He had been treated with anti-psychotic medication at that time.

(R. 5: Post-conviction Transcript, 3/29/95, v. II, p. 209; Apx. 842). Each of three psychiatrists

> over the years from 1985 to 1990 had diagnosed him as either having a bipolar disorder or a schizo affective disorder or schizophrenia. They described his agitated behavior. They described his hostility. They described his inappropriate affect, his experience of auditory hallucinations, his delusions, his paranoia, his thoughts of

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383 U.S. 375, 384, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966); *Nguyen v. Reynolds*, 131 F.3d 1340, 1346 (10th Cir. 1997).